1 IN THE DISTRICT COURT FOR CLEVELAND COUNTY 08:55:28

2 STATE OF OKLAHOMA

3

4 ----------

5 THE STATE OF OKLAHOMA, et al. )

6 v. ) NO. CJ-96-1499(H)

7 R. J. REYNOLDS, et al. )

8 ----------

9

10

11 COPY

12

13 DEPOSITION OF HELMUTH GOEPFERT, M.D., was

14 taken pursuant to the Oklahoma Rules of Civil

15 Procedure at M.D. Anderson Cancer Center,

16 1515 Holcombe, Room B2.4650, Houston, Texas,

17 commencing at 9:03 a.m., Wednesday, June 17,

18 1998, before Ruthie Trevino, Texas CSR No.

19 6087.

20

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22

23

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1 APPEARANCES OF COUNSEL:

2

3 FOR THE PLAINTIFFS:

4

5 O'QUINN & LAMINACK

6 BY: CHRISTIAN A. STEED, ESQ.

7 440 Louisiana, Suite 2300

8 Houston, Texas 77002

9 713-223-1000

10

11

12 FOR LORILLARD TOBACCO COMPANY, ET AL.:

13

14 THOMPSON COBURN

15 BY: CARL L. ROWLEY, ESQ.

16 TAMMY S. KING, ESQ.

17 One Mercantile Center

18 St. Louis, Missouri 63101

19 314-552-6000

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1 ALSO PRESENT:

2

3 Mr. Joe Mieczkowski, Videographer

4 Legal Media Systems, Inc.

5 550 Westcott, Suite 400

6 Houston, Texas 77007

7 713-861-4700

8

9

10 REPORTED BY:

11

12 RUTHIE TREVINO, CSR

13 Certification No. 6087

14 Contracted by Interim Court Reporting

15 811 Dallas, Suite 1150

16 Houston, Texas 77002-5912

17 713-650-3500 / 713-650-3545 fax

18

19

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2

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9 **computerized) to any party. However, my own**
10 **experts, co-counsel, and staff may have**
11 **limited internal use of same with the**
12 **understanding that I agree to destroy all**
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15 **final transcript and/or final computerized**
16 **form, upon its completion.**
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18 I further agree that I will pay for this
19 extra service as set forth in the reporter's
20 rate structure. If I choose not to order a
21 final transcript, I agree to pay for the hard
22 copy or computerized form of the rough draft
23 as if it were the final transcript.
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1 **P R O C E E D I N G S**

2

3 (Marked Exhibit Nos. 1 through

4 3.)

5

6 THE VIDEOGRAPHER: Today's date is 09:03:12

7 Wednesday, June 17th, 1998. This is the 09:03:16

8 beginning of Tape 1. The time is 09:03:18

9 approximately 9:03 a.m. 09:03:20

10

11 HELMUTH GOEPFERT, M.D.,

12 having been first duly sworn, was examined

13 and testified as follows:

14

15 EXAMINATION

16 BY MR. ROWLEY: 09:03:28

17 Q. Good morning, Doctor. My name 09:03:30

18 is -- 09:03:30

19 A. Good morning. 09:03:32

20 Q. -- Carl Rowley. I represent 09:03:34

21 Lorillard Tobacco Company, and I'll be taking 09:03:38

22 your deposition today. 09:03:40

23 Have you received any documents 09:03:42

24 from the plaintiffs' lawyers for the Oklahoma 09:03:46

25 case specifically? 09:03:46



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1 A. From the plaintiff lawyer for 09:03:52
2 the Oklahoma case? 09:03:54
3 Q. Yes, sir. 09:03:56
4 A. Specifically for the Oklahoma 09:04:00
5 case? 09:04:00
6 Q. Yes, sir. 09:04:00
7 A. Yeah, I received a stack here 09:04:02
8 delivered June the 9th. 09:04:04
9 Q. Okay. May I see that, please. 09:04:06
10 A. (Witness handed documents to 09:04:10
11 Counsel.)
12 Q. And were you told that this 09:04:16
13 stack of documents was being sent to you 09:04:20
14 specifically for the Oklahoma case? 09:04:22
15 A. I was told that, yes, sir. 09:04:24
16 Q. I notice in this stack there are 09:04:38
17 some documents that relate specifically to 09:04:42
18 pregnancy and neonatal issues. 09:04:46
19 A. Yes, sir. 09:04:46
20 Q. Did you notice that when you 09:04:48
21 looked through it? 09:04:50
22 A. Yes, sir. 09:04:50
23 Q. You are a head and neck surgeon, 09:04:54
24 of course.
25 A. That is totally out of my area 09:04:56



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1 of expertise. 09:04:58
2 Q. Okay. You mean the documents 09:04:58
3 that are contained in the stack that you just 09:05:00
4 handed me are totally outside the scope of 09:05:04
5 your expertise? 09:05:04
6 A. Correct. They're outside the 09:05:06
7 scope of my expertise. 09:05:08
8 Q. Okay. I'm going to mark this as 09:05:10
9 Exhibit 4. I've previously marked some 09:05:14
10 others that we'll get to later. 09:05:20
11
12 (Marked Exhibit No. 4.)
13 09:05:22
14 BY MR. ROWLEY:
15 Q. The literature of documents that 09:05:22
16 you say are completely outside the scope of 09:05:22
17 your expertise have been marked as Group 09:05:24
18 Exhibit 4; is that right? 09:05:26
19 A. Correct. 09:05:28
20 Q. Do you know how you came to 09:05:36
21 receive these or why you received literature 09:05:38
22 or documents that relate to neonatology and 09:05:42
23 pregnancy and some more issues? 09:05:44
24 A. I don't know. 09:05:50
25 Q. All right. I take it, then, 09:05:52



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1 that in formulating your opinions for this 09:05:56
2 case, you in no way relied upon the documents 09:06:00
3 that are contained in Exhibit 4. 09:06:02
4 A. You're correct. 09:06:04
5 Q. And they have not affected your 09:06:06
6 opinions in any way? 09:06:08
7 A. They have not. 09:06:08
8 Q. And you do not intend to discuss 09:06:12
9 them at trial if you testify at trial? 09:06:14
10 A. I don't. 09:06:14
11 Q. Or to refer to them at trial if 09:06:16
12 you testify at trial? 09:06:18
13 A. I don't. 09:06:18
14 Q. All right. Aside from the 09:06:26
15 documents in Exhibit 4, the literature and 09:06:30
16 other documents in Exhibit 4, have you been 09:06:34
17 provided any other materials or documents by 09:06:38
18 the plaintiffs' lawyers for the Oklahoma 09:06:40
19 case? 09:06:40
20 A. No, I haven't. 09:06:42
21 Q. Okay. You have been provided 09:06:44
22 with no company documents, internal documents 09:06:50
23 of the defendants; is that correct? 09:06:52
24 A. No, I haven't. 09:06:52
25 Q. You have not reviewed or 09:06:56



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1 considered or formulated any opinions 09:06:58
2 regarding any documents of the defendants; is 09:07:04
3 that right?
4 A. No, I haven't. 09:07:04
5 Q. Okay. And that would include 09:07:12
6 memoranda or reports or correspondence or 09:07:18
7 scientific studies or any other documents 09:07:22
8 that were produced by the defendants in this 09:07:24
9 case; is that correct? 09:07:24
10 A. No, I don't. 09:07:26
11 Q. Okay. You haven't seen those; 09:07:28
12 you don't rely on them; you don't intend to 09:07:30
13 testify about them; you haven't been asked to 09:07:32
14 testify about them? 09:07:34
15 A. You are correct. 09:07:34
16 Q. Okay. All right. Doctor, I 09:07:40
17 know your deposition has been taken before. 09:07:42
18 You're familiar with the ground rules of 09:07:44
19 depositions? 09:07:44
20 A. Correct. 09:07:44
21 Q. If I ask you any questions today 09:07:48
22 that are at all unclear to you, will you 09:07:50
23 agree to not answer the question but rather 09:07:54
24 ask me to clarify it? 09:07:56
25 A. Correct. 09:07:56



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1 Q. Your deposition was taken in the 09:08:00
2 Texas case? 09:08:02
3 A. Correct, in the Texas case. 09:08:04
4 Q. All right. Do your opinions in 09:08:06
5 the Oklahoma case differ in any way from the 09:08:10
6 opinions that you intended to render in the 09:08:14
7 Texas case? 09:08:16
8 A. Would you repeat that? 09:08:18
9 Q. Sure. Do your opinions in this 09:08:20
10 case differ in any way from that case? 09:08:22
11 A. No, they don't. 09:08:24
12 Q. Do the materials or information 09:08:26
13 that you rely upon in this case, the Oklahoma 09:08:30
14 case, differ in any way from the materials 09:08:34
15 that you intend to -- that you intended to 09:08:36
16 rely on in the Texas case? 09:08:40
17 A. No, they don't differ. 09:08:42
18 Q. Okay. You have not reviewed any 09:08:44
19 additional materials or studies or literature 09:08:48
20 or documents for the Oklahoma case except for 09:08:56
21 those in Exhibit 4 on which you do not rely? 09:08:56
22 A. Correct. 09:08:58
23 Q. Okay. Did you review a 09:09:04
24 disclosure statement for this case? Do you 09:09:08
25 know what I mean by "a disclosure statement"? 09:09:10



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1 A. You will have to refresh my 09:09:14
2 memory. I don't know. 09:09:14
3 Q. Did you review something that 09:09:16
4 was filed with the court or produced to the 09:09:18
5 defendants that was a list of your opinions? 09:09:22
6 A. I don't recall. 09:09:24
7 Q. If you had reviewed such a 09:09:34
8 document, would you have it in your file for 09:09:36
9 this case? 09:09:38
10 A. Not that I know of. 09:09:40
11 Q. Okay. Do you have a file for 09:09:44
12 the Oklahoma case? 09:09:44
13 A. No, I don't. 09:09:50
14 Q. Okay. Do you have any documents 09:09:50
15 that you've received for the Oklahoma case 09:09:52
16 aside from those -- 09:09:52
17 A. Not that I recall. Don't have 09:09:52
18 anything except that. 09:09:54
19 Q. Okay. You have nothing related 09:09:56
20 to Oklahoma -- or the Oklahoma case aside 09:10:00
21 from the Group Exhibit 4? 09:10:02
22 A. Correct. 09:10:02
23 Q. And you don't recall having 09:10:08
24 reviewed or approved any list of opinions or 09:10:14
25 list of citations or reliance materials for 09:10:18



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1 the Oklahoma case? 09:10:18
2 A. No, I have not. 09:10:20
3 Q. Okay. Let me hand you what's 09:10:42
4 been marked as Exhibit 2. 09:10:44
5 MR. ROWLEY: And for the record, this 09:10:54
6 is a facsimile that I received from the 09:10:58
7 O'Quinn firm, that purported to relate to 09:11:04
8 Dr. Goepfert's testimony. There was a page 09:11:08
9 in this fax that was a document with respect 09:11:16
10 to which a claim of privilege has been 09:11:18
11 asserted and with respect to which there has 09:11:22
12 been no adjudication by the Oklahoma court on 09:11:26
13 the privilege claim; therefore, I have 09:11:32
14 removed that document so as to ensure that 09:11:34
15 there is no argument that any claim of 09:11:36
16 privilege has been waived. I want you to 09:11:40
17 have notice that I took that out. 09:11:42
18 MR. STEED: Okay. 09:11:42
19 MR. ROWLEY: And I'm not claiming that 09:11:44
20 it wasn't in there. But we have removed it, 09:11:46
21 and it is my understanding that the claim of 09:11:50
22 privilege is asserted. And I'm not going to 09:11:58
23 mark this as an exhibit. 09:12:10
24 And, for the record, there is a 09:12:26
25 control number on this document, ATMMPRIV 09:12:32



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1 0012675, so that it can be later identified. 09:12:44
2 BY MR. ROWLEY: 09:13:06
3 Q. Doctor, regardless of what 09:13:08
4 documents are included or not included in 09:13:10
5 Exhibit 2, you have not been asked to and you 09:13:16
6 have no intention of relying on or discussing 09:13:18
7 any internal company documents at the trial 09:13:22
8 of this case; is that right? 09:13:22
9 A. I don't understand what you're 09:13:26
10 telling me. 09:13:26
11 Q. Sure. The plaintiffs' lawyers 09:13:28
12 haven't given you any internal documents, 09:13:32
13 company documents, that were produced by the 09:13:34
14 defendants? You don't recall ever -- 09:13:36
15 A. No, no. 09:13:38
16 Q. You don't recall ever having 09:13:38
17 seen -- 09:13:38
18 A. No. 09:13:40
19 Q. All right. 09:13:40
20 A. No.
21 Q. All right. 09:13:40
22 A. May I ask you: What does this 09:13:42
23 mean, now? 09:13:42
24 Q. I will ask you questions about 09:13:44
25 that. 09:13:44



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1 A. Oh, okay. 09:13:46
2 Q. To the extent that the 09:13:46
3 plaintiffs' lawyers may have included in 09:13:50
4 their facsimile to me any documents that are 09:13:52
5 internal to any of the defendants, you 09:13:56
6 haven't seen any of those documents? 09:13:56
7 A. No, I have not. 09:13:58
8 Q. You haven't considered them? 09:14:00
9 A. No, I have not. 09:14:00
10 Q. You haven't reviewed them? 09:14:02
11 A. No, I have not. 09:14:02
12 Q. You haven't formulated any 09:14:04
13 opinions whatsoever regarding them? 09:14:06
14 A. No, I have not. 09:14:06
15 Q. And those documents to the 09:14:08
16 extent that any were included in the 09:14:12
17 facsimile to me have in no way affected your 09:14:14
18 opinions because you haven't seen them? 09:14:16
19 A. No, I have not. 09:14:18
20 Q. Okay. And they haven't affected 09:14:18
21 your opinion? 09:14:18
22 A. They have not. 09:14:20
23 Q. Okay. 09:14:20
24 MR. ROWLEY: The document on which 09:14:34
25 there has been a claim of privilege asserted 09:14:38



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1 is included in Exhibit 4. And with Counsel's 09:14:46
2 permission, since we've identified it by 09:14:48
3 document number, I would like to remove it 09:14:54
4 from Exhibit 4. Is that acceptable? 09:15:00
5 MR. STEED: Acceptable. 09:15:04
6 MR. ROWLEY: Okay.
7 BY MR. ROWLEY: 09:15:06
8 Q. All right, Doctor. If you'll 09:15:22
9 look at Exhibit 2 and just kind of page 09:15:26
10 through it, you will recognize that a number 09:15:30
11 of the -- Well, actually, all of the 09:15:34
12 literature-type sources that are in Exhibit 2 09:15:36
13 were in Exhibit 4. If you'd page through 09:15:42
14 that and see if you recognize those as the 09:15:46
15 documents that relate to -- 09:15:48
16 A. The first part of this exhibit? 09:15:50
17 Q. The -- 09:15:52
18 A. Not all of it because there's 09:15:54
19 some of it that is not here. 09:15:56
20 Q. Okay. All right. There is a 09:15:58
21 letter that is not included in Exhibit 4? 09:16:04
22 Tell you what -- 09:16:06
23 A. No. What the Exhibit 4 09:16:08
24 contains -- what is in the portion that's 09:16:12
25 defined in June 9th letter here. 09:16:16



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1 Q. Okay.
2 A. And that is Exhibit 4. But as I 09:16:18
3 go further through Exhibit 2, I identify a 09:16:24
4 document that is not in Exhibit 4, which 09:16:28
5 starts on -- which specifically states 09:16:30
6 Dr. Helmuth Goepfert Reliance Material [sic] 09:16:34
7 Publicly Available Documents. 09:16:36
8 Q. Okay. 09:16:36
9 A. That is not in Exhibit 4. 09:16:38
10 Q. Okay, I understand. So all of 09:16:40
11 the documents that are in Exhibit 2 are 09:16:42
12 contained in Exhibit 4 with the exception of 09:16:46
13 the -- 09:16:50
14 A. Of the listing and my summary 09:16:52
15 opinions. 09:16:52
16 Q. Okay. So with the exception of 09:16:54
17 Dr. Helmuth Goepfert Reliance Materials 09:16:58
18 Publicly Available Documents and Dr. Helmuth 09:17:02
19 Goepfert, M.D., Summary of Opinions, 09:17:04
20 everything that is in Exhibit 2 is in 09:17:08
21 Exhibit 4? 09:17:08
22 A. In my quick searching through 09:17:12
23 it, I concur with that. 09:17:14
24 Q. Okay. And really the point of 09:17:16
25 my question is that the documents are 09:17:18



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1 literature-type components of Exhibit 2, are 09:17:24
2 the neonatology and pregnancy -- 09:17:26
3 A. Correct. 09:17:26
4 Q. -- articles on which you do not 09:17:30
5 rely? 09:17:30
6 A. You are correct. 09:17:34
7 Q. All right. And with the 09:17:34
8 exception of the list of reliance materials 09:17:40
9 that has your name at the top and the summary 09:17:46
10 of opinions which has your name at the top, 09:17:46
11 you do not rely in any way on anything that 09:17:50
12 is contained in Exhibit 2? 09:17:52
13 A. You're correct. 09:17:52
14 Q. Because those materials are 09:17:54
15 completely and utterly outside the scope of 09:17:58
16 your expertise? 09:17:58
17 A. Correct. 09:17:58
18 Q. And have, literally, nothing to 09:18:00
19 do with the opinions that you formulated in 09:18:02
20 the case? 09:18:02
21 A. Correct. 09:18:04
22 Q. Or with the opinions that you 09:18:06
23 intend to give or have been asked to give at 09:18:08
24 trial in the case? 09:18:10
25 A. Correct. 09:18:10



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1 Q. Okay. Take a look at the June 09:18:16
2 9, 1998, letter, which, I think, is three 09:18:24
3 pages in to Exhibit 2. Do you see that? 09:18:28
4 A. Yes. 09:18:32
5 Q. All right. This letter lists, 09:18:36
6 in 14 numbered entries, the materials on 09:18:42
7 which you do not rely. That's correct, isn't 09:18:46
8 it? 09:18:46
9 A. You're correct. 09:18:48
10 Q. All right. You don't rely in 09:18:48
11 any way and don't intend to testify in any 09:18:52
12 way regarding any of these numbered 14 09:18:56
13 entries in the June 9 letter? 09:19:00
14 A. You're correct. 09:19:00
15 Q. Okay. And you have not been 09:19:04
16 asked to do so? 09:19:06
17 A. You're correct. 09:19:06
18 Q. All right. Now, if you look at 09:19:14
19 the bottom of the -- of page 2 of the June 9 09:19:16
20 letter which is a part of Exhibit 2 -- Do 09:19:22
21 you see the last sentence? It starts with 09:19:26
22 "This, of course . . ." 09:19:28
23 A. Um-hum. 09:19:28
24 Q. It says, "This, of course, is in 09:19:30
25 addition to Dr. Goepfert's knowledge, 09:19:34



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1 experience, and research in the field of 09:19:36
2 cardiovascular disease." 09:19:38
3 A. You are correct. I'm not an 09:19:40
4 expert in cardiovascular disease. 09:19:44
5 Q. Okay. You're not a 09:19:44
6 cardiologist? 09:19:44
7 A. I'm not a cardiologist. 09:19:46
8 Q. You're a head and neck surgeon? 09:19:48
9 A. I'm a head and neck surgeon. 09:19:50
10 Q. Okay. You don't intend to give 09:19:52
11 any opinions or provide any testimony on 09:19:54
12 cardiology issues? 09:19:54
13 A. No, I'm not. 09:19:56
14 Q. And so this letter, to the 09:19:58
15 extent that it says, "Of course [sic], this 09:20:04
16 is in addition to Dr. Goepfert's knowledge, 09:20:10
17 experience, and research in the field of 09:20:10
18 cardiovascular disease," it's wrong. The 09:20:12
19 letter's wrong. That's not your field. 09:20:18
20 A. That's not my field. 09:20:20
21 Q. Okay. 09:20:20
22 A. That's not my field. 09:20:22
23 Q. All right. In this -- You 09:20:24
24 surmise, from looking at this letter, that 09:20:28
25 this is simply an error or a mistake? 09:20:30



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1 A. That is an error. 09:20:30
2 Q. Okay. All right. Take a look 09:20:34
3 at the paragraph that appears just under 09:20:38
4 No. 14 on page 2 of the June 9, 1998, letter 09:20:44
5 which is part of Exhibit 2. It mentions the 09:20:50
6 1998 Surgeon General's report. 09:20:52
7 A. Um-hum. Yes. 09:20:58
8 Q. That report did not have as its 09:21:02
9 subject head and neck cancer or lung cancer, 09:21:06
10 did it? 09:21:06
11 A. I do not recall. 09:21:08
12 Q. Okay. You haven't performed a 09:21:10
13 comprehensive review of that report? 09:21:12
14 A. I have not done it. 09:21:14
15 Q. All right. And, therefore, you 09:21:14
16 don't rely on that report in any way? 09:21:16
17 A. I will not. 09:21:16
18 Q. All right. You won't mention it 09:21:18
19 at trial? 09:21:18
20 A. I will not. 09:21:20
21 Q. Okay. And if I understand your 09:21:52
22 testimony correctly, you have not brought 09:21:54
23 with you today any literature or documents on 09:21:58
24 which you will actually rely at trial or that 09:22:02
25 you will mention at trial. That's true? 09:22:06



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1 A. Excuse me? 09:22:08
2 Q. As I understand it, you have not 09:22:10
3 brought with you today to the deposition any 09:22:12
4 documents or literature or references that 09:22:16
5 you will rely on at trial or that you -- 09:22:18
6 A. No, I haven't brought anything 09:22:20
7 today, no. 09:22:20
8 Q. Okay. You have nothing to show 09:22:22
9 me today that you -- 09:22:24
10 A. No, I have not anything to show 09:22:26
11 you today. 09:22:28
12 Q. Okay. It would be helpful if 09:22:28
13 you waited until I finish the question. It 09:22:32
14 makes for a cleaner record. 09:22:34
15 You haven't brought anything 09:22:36
16 with you today that you intend to show the 09:22:38
17 jury? 09:22:38
18 A. I haven't brought anything today 09:22:40
19 that I intend to show the jury, correct. 09:22:44
20 Q. The only documents that you 09:22:44
21 brought with you today are Exhibit 4 on which 09:22:46
22 you have no intention of relying -- 09:22:50
23 A. Correct. 09:22:50
24 Q. -- or mentioning, correct? 09:22:54
25 A. Correct. 09:22:54



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1 Q. Okay. All right. If you'll 09:23:02
2 look at -- toward the end of Exhibit 2, the 09:23:04
3 list of reliance materials that has your name 09:23:06
4 at the top. Does this differ in any way from 09:23:14
5 the reliance materials that were listed for 09:23:16
6 the Texas case? 09:23:18
7 A. Not that I can find a 09:23:20
8 difference, but I would have to compare it 09:23:22
9 side by side. 09:23:24
10 Q. Okay. To the extent that this 09:23:28
11 list of reliance materials is different in 09:23:30
12 any way, do you know how it came to be 09:23:34
13 changed or amended? 09:23:36
14 A. I wouldn't know. 09:23:38
15 Q. Okay. You did not change or 09:23:38
16 amend your list of reliance materials? 09:23:42
17 A. No, I did not. 09:23:42
18 Q. All right. You didn't make any 09:23:46
19 changes in it for the Oklahoma case as 09:23:48
20 compared to the Texas case; is that right? 09:23:52
21 A. You are correct. 09:23:52
22 Q. And you haven't reviewed 09:23:54
23 anything that you intend to rely on, 09:23:56
24 specifically in the Oklahoma case, other than 09:24:00
25 the things that you testified about in the 09:24:04



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1 Texas deposition? 09:24:06
2 A. Correct. 09:24:06
3 Q. And so if I want to be sure that 09:24:12
4 I know precisely what you rely on and what 09:24:16
5 you may refer to at trial in this case, the 09:24:20
6 way that I can do that is to look at your 09:24:24
7 Texas deposition; and if you didn't mention 09:24:26
8 it there, you're not going to mention it at 09:24:28
9 trial in Oklahoma? 09:24:30
10 A. Correct. 09:24:30
11 Q. All right. Take a look at the 09:24:36
12 Summary of Opinions that's part of 09:24:42
13 Exhibit 2. 09:24:46
14 MR. STEED: Did you receive an updated 09:24:48
15 one? 09:24:48
16 MR. ROWLEY: Yes, I did. 09:24:50
17 MR. STEED: Okay. 09:24:52
18 MR. ROWLEY: And I'm going to mark 09:24:54
19 that. 09:24:54
20 THE WITNESS: That was the previous 09:24:56
21 one, wasn't it? 09:24:58
22 MR. STEED: Yeah, that's the old one. 09:25:00
23 And then we sent -- 09:25:00
24 MR. ROWLEY: I have the new one, and 09:25:02
25 we'll mark that in a second. 09:25:04



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1 MR. STEED: Okay. 09:25:06
2 BY MR. ROWLEY: 09:25:06
3 Q. Doctor, do you see the Summary 09:25:08
4 of Opinions that is the last item of 09:25:10
5 Exhibit 2? 09:25:10
6 A. Correct. 09:25:12
7 Q. Does this differ in any way from 09:25:16
8 the Summary of Opinions that were generated 09:25:20
9 for the Texas case? 09:25:22
10 A. I would have to compare it with 09:25:22
11 the other one. 09:25:24
12 Q. Okay. To the extent that it 09:25:24
13 differs in any way, you were not responsible 09:25:26
14 for changing it? 09:25:28
15 A. Yes, I was. 09:25:28
16 Q. Oh, you were? Did you -- 09:25:30
17 A. I don't know because I changed 09:25:32
18 what I had the other day. 09:25:32
19 Q. Oh, you did? You made some 09:25:34
20 corrections of typographical errors? 09:25:36
21 MR. STEED: Correct. 09:25:38
22 MR. ROWLEY: Okay. Let's mark what 09:25:40
23 I -- I think I know what he's talking about, 09:25:42
24 so we'll mark that. 09:25:42
25 BY MR. ROWLEY: 09:25:44



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1 Q. Here is Exhibit 3, and ask you 09:25:46
2 if you've ever seen that before? 09:26:10
3 A. (Witness examined exhibit.) I 09:26:16
4 mean, let me -- 09:26:18
5 Q. Sure. Take your time. 09:26:20
6 A. Let me ask you a question here. 09:26:22
7 I met with Counsel the other day, and they 09:26:24
8 showed me a document that Counsel brought 09:26:28
9 with him today that I said had to be edited. 09:26:32
10 Q. Okay. 09:26:32
11 MR. STEED: Would it be helpful if I 09:26:34
12 showed him his editori- -- where he made the 09:26:36
13 changes on them? 09:26:38
14 MR. ROWLEY: Why don't we just mark 09:26:40
15 it? We'll mark it as 5. 09:26:42
16 MR. STEED: Well, I've got some notes 09:26:44
17 that I've written on here that I don't think 09:26:46
18 I want to -- I've actually added some things 09:26:48
19 to this since the doctor -- I've written on 09:26:52
20 it. 09:26:52
21 MR. ROWLEY: Well, then -- 09:26:52
22 MR. STEED: It's not a big deal.
23 MR. ROWLEY: -- we either -- 09:26:54
24 MR. STEED: You don't -- you're right. 09:26:54
25 You can't let him look at 5 -- Well, I don't 09:26:56



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1 think it's any big deal. 09:26:58
2 Yeah, we can mark it. Let's 09:27:00
3 mark it. Let's mark it. 09:27:00
4 MR. ROWLEY: Okay. 09:27:02
5
6 (Marked Exhibit No. 5.)
7
8 BY MR. ROWLEY: 09:27:06
9 Q. Okay. Why don't you take a look 09:27:08
10 at Exhibit 5, which is a two-page exhibit, 09:27:20
11 Doctor. 09:27:24
12 A. (Witness examined exhibits.) 09:28:08
13 Q. Doctor, you're comparing 09:29:28
14 Exhibit 5 with which exhibit? Is it 3? 09:29:30
15 MR. STEED: 2. 09:29:38
16 MR. ROWLEY: No. Okay. That's right. 09:29:42
17 A. Oh, wait a minute. Yeah, this 09:29:44
18 is the one. 09:29:46
19 BY MR. ROWLEY: 09:29:50
20 Q. Right. You're comparing 09:29:52
21 Exhibit 5 with which exhibit? 09:29:54
22 A. 3. 09:29:56
23 Q. Okay. And you're comparing 09:29:58
24 those to determine whether the edits that you 09:30:00
25 made in Exhibit 5 were actually made in 09:30:04



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1 Exhibit 3? Is that what you're doing? 09:30:08
2 A. Yeah. 09:30:08
3 Q. Okay. 09:30:08
4 A. (Witness examined exhibits.) 09:30:16
5 Correct. 09:30:36
6 Q. All right. 09:30:38
7 A. Exhibit 3 I agree with. 09:30:38
8 Q. Okay. Take -- Look at 09:30:40
9 Exhibit 5. There is some handwriting in 09:30:42
10 Exhibit 5. 09:30:44
11 A. Yeah. 09:30:44
12 Q. Are those your written marks on 09:30:48
13 Exhibit 5? 09:30:50
14 A. Correct. 09:30:50
15 Q. Are all of them yours? 09:30:50
16 A. I mean, the written ones are 09:30:54
17 mine, yes. The circles and added numbers are 09:31:00
18 not mine. 09:31:00
19 Q. Okay. 09:31:00
20 A. If you want to be specific. 09:31:02
21 Q. Okay. And when did you make 09:31:04
22 these marks on Exhibit 5? 09:31:06
23 A. Monday. 09:31:06
24 Q. Okay. If I understand your 09:31:12
25 testimony, the changes that are in black ink 09:31:16



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1 on Exhibit 5 are yours. 09:31:16
2 A. Correct. 09:31:18
3 Q. The notes or comments that are 09:31:20
4 in blue ink on Exhibit 5 are not yours. 09:31:24
5 A. Correct. 09:31:24
6 Q. Okay. And if I understand this 09:31:36
7 correctly, you had not seen a Summary of 09:31:44
8 Opinions for the Oklahoma case until you saw 09:31:48
9 the unedited version of Exhibit 5. 09:31:50
10 A. Correct. 09:31:52
11 Q. Okay. And when you first saw 09:31:54
12 the Summary of Opinions for the Oklahoma 09:31:56
13 case, which was the unedited version of 09:31:58
14 Exhibit 5, you purposefully struck out of 09:32:04
15 that summary the sentence, "Even where 09:32:08
16 non-surgical treatment plans are followed, 09:32:10
17 severe disability and a significantly reduced 09:32:14
18 quality of life," period. You just took that 09:32:16
19 out? 09:32:16
20 A. Took it out because it made no 09:32:18
21 sense. 09:32:18
22 Q. Okay. And you took that out on 09:32:20
23 purpose? 09:32:20
24 A. Yeah. 09:32:22
25 Q. All right. And that's no longer 09:32:24



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1 a part of your opinions or the summary of 09:32:26
2 your opinions? 09:32:26
3 A. Cannot be if it makes no sense. 09:32:30
4 Q. Okay. All right. It looks like 09:32:36
5 they misspelled your name, and you corrected 09:32:38
6 that. 09:32:40
7 A. Correct. 09:32:40
8 Q. Okay. Is Exhibit 3 what you 09:32:54
9 would consider to be the final version of 09:32:56
10 your Summary of Opinions? 09:32:56
11 A. Yes, it is. 09:32:58
12 Q. Now, does Exhibit 3 differ in 09:33:04
13 any way from the Summary of Opinions that 09:33:06
14 you -- that were produced -- that was 09:33:14
15 produced in the Texas case? 09:33:16
16 A. In essence, no, it doesn't; but 09:33:20
17 I would have to compare line by line. 09:33:22
18 Q. Okay. But as far as you're 09:33:24
19 concerned, your opinions -- 09:33:24
20 A. It doesn't -- The opinions do 09:33:26
21 not differ. 09:33:26
22 MR. STEED: Let him finish the 09:33:28
23 question. 09:33:28
24 BY MR. ROWLEY: 09:33:28
25 Q. The opinions that you will give 09:33:30



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1 at trial, if you testify at trial in 09:33:32
2 Oklahoma, do not differ in any way, as far as 09:33:34
3 you're concerned, from the opinions that you 09:33:36
4 gave in the Texas deposition? 09:33:38
5 A. No, they don't. 09:33:40
6 Q. Okay. Now, you brought with you 09:33:50
7 some copies of your curriculum vitae today? 09:33:56
8 A. Yes, I did. 09:33:58
9 Q. Okay. And I hand you 09:34:02
10 Exhibit 1. Is that your CV? 09:34:06
11 A. Yes, it is. 09:34:06
12 Q. And is this an up-to-date CV? 09:34:10
13 A. Up to date as to the 4th of June 09:34:16
14 1998. 09:34:16
15 Q. All right. Is there anything 09:34:20
16 that you intend to add to this CV that you 09:34:22
17 just haven't gotten around to adding to it? 09:34:26
18 A. I do not. 09:34:26
19 Q. So it is up to date, to the 09:34:32
20 current date? 09:34:34
21 A. To the current date, correct. 09:34:34
22 Q. Can you tell me what you've 09:34:42
23 added to the CV since your deposition was 09:34:46
24 taken on 9-12-97? 09:34:50
25 A. No, I can't. 09:34:52



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1 Q. Okay. Who does the additions 09:35:00
2 and edits to your CV? Do you do it? 09:35:00
3 A. My secretary under my 09:35:02
4 instructions. 09:35:04
5 Q. Okay. And to the extent that 09:35:06
6 you've published anything, she adds that in? 09:35:08
7 A. That is correct. 09:35:08
8 Q. To the extent that you present a 09:35:10
9 paper, she adds those in? 09:35:12
10 A. That is correct. 09:35:12
11 Q. So may I assume that if there is 09:35:24
12 not an addition of a published paper or a 09:35:30
13 presentation at a conference in this updated 09:35:36
14 CV -- Well, let me rephrase that. 09:35:42
15 Have you included all published 09:35:44
16 papers and presentations that have occurred 09:35:46
17 since 9-12-97 in this updated CV? 09:35:52
18 A. To the extent that I have been 09:35:56
19 aware of them. 09:35:56
20 Q. Okay. Have -- Since 9-12-97 09:36:02
21 have you published anything that you're not 09:36:04
22 aware of? 09:36:04
23 A. It could have remained unknown 09:36:08
24 to me because I haven't seen it in 09:36:10
25 publication, and it could be published. 09:36:12



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1 Q. Okay. Do you have anything that 09:36:14
2 you have submitted for publication that is 09:36:16
3 pending at the current time? 09:36:18
4 A. Yes, it is; but I don't know 09:36:22
5 exactly what it is. It could happen 09:36:24
6 because -- You don't understand how 09:36:26
7 publications take place. 09:36:28
8 Q. I don't? 09:36:30
9 A. No. 09:36:30
10 Q. Okay. 09:36:32
11 A. You have to submit them. They 09:36:34
12 get into peer review. They have to go 09:36:36
13 through that whole process, and suddenly they 09:36:36
14 show up in one of the journals. And I 09:36:40
15 could -- it could well be that it's out there 09:36:42
16 published and I haven't seen the journal. 09:36:44
17 Q. Okay. Let me rephrase the 09:36:46
18 question, then, to make it a little bit 09:36:48
19 clearer to you. 09:36:50
20 Have you submitted anything for 09:36:52
21 publication that is not in your CV? 09:36:54
22 A. Possibly, yes. 09:36:58
23 Q. You say, "Possibly, yes." Do 09:37:00
24 you keep track of papers that you've 09:37:04
25 submitted for publication? 09:37:04



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1 A. They come from so many different 09:37:08
2 sources that I usually don't. If I'm aware 09:37:14
3 of it, yes; but there are many authors in 09:37:18
4 this. And a paper goes through processes 09:37:20
5 until it finally is submitted. So it could 09:37:22
6 have been submitted from the office of one of 09:37:24
7 my associates and my name is on, even though 09:37:28
8 I participated in the writing of the paper. 09:37:30
9 It may be somewhere in the process -- in the 09:37:34
10 mill, and I don't know about it. 09:37:34
11 Q. Okay. But you would certainly 09:37:36
12 know if you participated in the process of 09:37:38
13 writing the paper. 09:37:40
14 A. Oh, yes. 09:37:40
15 Q. Okay. Are there any papers that 09:37:42
16 you have participated in that may be 09:37:46
17 published in the future, regardless of 09:37:50
18 whether they have been submitted yet, that 09:37:52
19 may be published in the future that you can 09:37:54
20 name for me today? 09:37:56
21 A. At least two or three that are 09:38:00
22 in the process right now, but I cannot give 09:38:02
23 you the exact titles. 09:38:04
24 Q. All right. 09:38:04
25 A. I know that there are two or 09:38:06



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1 three that are in the process of being edited 09:38:08
2 at the present time. 09:38:10
3 Q. Okay. What are the subject 09:38:12
4 matters of those two or three? 09:38:14
5 A. The subject matters of these 09:38:16
6 have to do with types of head and neck 09:38:18
7 cancer. One is on salivary gland tumors. 09:38:24
8 Another one is on skin cancer. There's one 09:38:28
9 that is more on basic science aspects of head 09:38:32
10 and neck cancer. But the exact title by name 09:38:34
11 and verse, I cannot give you. 09:38:36
12 Q. Do you have drafts of these 09:38:42
13 papers? 09:38:42
14 A. I do have drafts of these 09:38:46
15 papers, yes. 09:38:46
16 Q. During the next break, would you 09:38:50
17 mind getting those so we can take a look at 09:38:50
18 them?
19 A. No. 09:38:52
20 Q. You will not do that? 09:38:52
21 A. No. 09:38:52
22 Q. Okay. If I were to ask you to 09:38:54
23 get a copy of those and have us mark them, 09:38:58
24 you would refuse to do that? 09:39:00
25 A. I do not see it relevant to this 09:39:04



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1 deposition. 09:39:04
2 Q. Okay. These papers have 09:39:08
3 absolutely nothing to do with your opinions 09:39:10
4 in this case? 09:39:10
5 A. Correct. 09:39:10
6 Q. All right. You will in no way 09:39:12
7 rely upon them? 09:39:14
8 A. Correct. 09:39:14
9 Q. They have nothing to do with 09:39:16
10 smoking as a risk factor for disease? 09:39:18
11 A. If they do, I will not rely on 09:39:24
12 those papers. 09:39:24
13 Q. Okay. 09:39:24
14 A. I will rely only on what is 09:39:28
15 published until now. 09:39:30
16 Q. Okay. Do the drafts of papers 09:39:32
17 that you will not allow us to see today 09:39:34
18 relate in any way to risk factors for 09:39:40
19 diseases that have been statistically 09:39:42
20 associated with smoking? 09:39:44
21 A. Yes, they do. 09:39:48
22 Q. All right. You have written 09:39:52
23 drafts of those papers? 09:39:52
24 A. Yes, I do. 09:39:54
25 Q. All right. They are papers 09:39:56



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1 which you either have written or have 09:40:00
2 contributed to in terms of editing and 09:40:04
3 contributing your thought process, right? 09:40:06
4 A. Correct. 09:40:06
5 Q. And you have copies of them 09:40:10
6 here, right? 09:40:12
7 A. I don't have them here. 09:40:14
8 Q. No, no. You have copies -- 09:40:16
9 A. They are somewhere -- 09:40:18
10 Q. -- here in the facility? 09:40:20
11 A. -- in the institution. 09:40:22
12 Q. Right. You have them here at 09:40:22
13 the facility? 09:40:24
14 A. Yeah. 09:40:24
15 Q. All right. And you will not 09:40:26
16 allow us to look at them? 09:40:28
17 A. Because I'm not going to use 09:40:28
18 them for my deposition either. 09:40:30
19 Q. Okay. 09:40:32
20 A. I only rely on what's published. 09:40:34
21 Q. Right. But regardless of 09:40:40
22 whether you intend to refer specifically to 09:40:44
23 them, you will not allow us to see them; is 09:40:46
24 that correct? 09:40:46
25 A. I will not refer to them. 09:40:48



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1 Q. Okay. Regardless of whether you 09:40:50
2 will refer to them, you will not allow us to 09:40:52
3 see them? 09:40:54
4 A. Correct. 09:40:54
5 Q. You said that one of them 09:41:06
6 relates to what you called basic science 09:41:08
7 aspects of certain types of head and neck 09:41:12
8 cancer. 09:41:12
9 A. Correct. 09:41:12
10 Q. What do you mean by that? 09:41:16
11 A. It's on experimental treatments 09:41:22
12 of head and neck cancer. 09:41:24
13 Q. Okay. What types of 09:41:28
14 experimental treatments? 09:41:30
15 A. I prefer not to go into that 09:41:32
16 because it's totally irrelevant to my 09:41:36
17 deposition. 09:41:36
18 Q. Okay. You will not -- You're 09:41:50
19 refusing to discuss the particular subject 09:41:54
20 matter of the paper that deals with the basic 09:41:56
21 science aspects of head and neck cancer? 09:41:58
22 A. With this particular, yes, 09:42:00
23 because it's unpublished data. 09:42:04
24 Q. Okay. You mentioned a paper as 09:42:16
25 one of the three that deals with -- Did you 09:42:20



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1 say salivary gland cancer? 09:42:22
2 A. Salivary gland cancer. 09:42:24
3 Q. And specifically what is that 09:42:30
4 paper about? How does it relate to salivary 09:42:32
5 gland cancer? 09:42:34
6 A. It relates to the results of 09:42:36
7 treatment from salivary gland cancer -- or of 09:42:42
8 salivary gland cancer. 09:42:44
9 Q. And what specifically does it 09:42:46
10 say about the results of treatment of 09:42:48
11 salivary gland cancer? 09:42:50
12 A. It gives the result by sight of 09:42:52
13 a given salivary gland cancer and the side 09:42:56
14 effects of treatment, the sequela of 09:43:00
15 treatment. 09:43:02
16 Q. Okay. And you won't share that 09:43:04
17 with us either? 09:43:04
18 A. No, because it's not pertinent 09:43:06
19 to this deposition; and it is not pertinent 09:43:08
20 to the subject matter that is on hand today. 09:43:14
21 Q. Has cigarette smoking been 09:43:18
22 statistically associated with salivary gland 09:43:24
23 cancer? 09:43:24
24 A. We do not know. 09:43:26
25 Q. Okay. It has not been proven 09:43:28



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1 that smoking causes salivary gland cancer? 09:43:32
2 A. We do not know. 09:43:32
3 Q. Okay. The reason we don't know 09:43:34
4 is that hasn't been proven. If it had been 09:43:38
5 proven, we would know, right? 09:43:40
6 A. I refuse to answer that because 09:43:42
7 we don't know. 09:43:44
8 Q. Okay. Do you agree with the 09:43:46
9 statement that it has not been proven to 09:43:48
10 cause -- cigarette smoking has not been 09:43:50
11 proven to cause salivary gland cancer? 09:43:54
12 A. Correct. 09:43:54
13 Q. Okay. Do the experimental 09:44:20
14 treatments discussed in one of these papers 09:44:24
15 relate to irradiation in any way? 09:44:30
16 A. Would you rephrase the question? 09:44:34
17 Q. Sure. Are any of the 09:44:38
18 experimental treatments that are discussed in 09:44:40
19 one of the papers that you mentioned, do any 09:44:44
20 of those relate to irradiation? 09:44:48
21 A. I don't know why that is 09:44:50
22 relevant to today's discussion. I told you. 09:44:54
23 Those papers are not published. I'm not 09:44:54
24 going to discuss any more. 09:44:58
25 Q. Okay. The last time I took your 09:45:20



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1 deposition I asked you a series of questions 09:45:24
2 about the scope of your expertise, what 09:45:26
3 you're an expert in, what you're not an 09:45:30
4 expert in. Do you remember that? 09:45:32
5 A. Yes, sir. 09:45:32
6 Q. You are not, today, an expert in 09:45:38
7 any field or area of inquiry or branch of 09:45:44
8 science or a subspecialty in medicine that 09:45:50
9 you were not an expert in on 9-12-97? 09:45:52
10 A. Correct. 09:45:54
11 Q. You haven't expanded the scope 09:45:56
12 of your expertise in any way? 09:45:56
13 A. You are correct. 09:45:58
14 Q. How long has it been since 09:46:06
15 you've performed cancer surgery with respect 09:46:10
16 to any type of lung cancer? 09:46:12
17 A. Lung cancer? 09:46:14
18 Q. Yes, sir. 09:46:16
19 A. None. 09:46:16
20 Q. You've never done that? 09:46:18
21 A. Never done that. 09:46:24
22 Q. Okay.
23 A. I would say "never" is not the 09:46:26
24 case, but it's over 25 years ago. 09:46:28
25 Q. Okay. As far as you're 09:46:30



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1 concerned, it may as well -- 09:46:32
2 A. It is not my area of expertise. 09:46:34
3 Q. Okay. Lung cancer is not, 09:46:36
4 correct? Is that right? 09:46:38
5 A. Correct. 09:46:40
6 Q. Have you done any work regarding 09:46:46
7 histological subtypes of bronchogenic 09:46:48
8 adenocarcinoma since your deposition on 09:46:52
9 9-12-97? 09:46:54
10 A. No, I have not. 09:46:54
11 Q. Have you designed any type of 09:46:58
12 epidemiologic study since your deposition on 09:47:02
13 9-12-97? 09:47:06
14 A. No, I have not. 09:47:06
15 Q. Have you studied up on or 09:47:10
16 learned anything about the design of 09:47:14
17 epidemiologic studies since your deposition 09:47:18
18 on 9-12-97? Have you studied that form? 09:47:22
19 A. What do you mean? 09:47:22
20 Q. Have you taken any courses on 09:47:24
21 epidemiology since then? 09:47:26
22 A. No, I have not. 09:47:28
23 Q. Okay. Are you, today, any more 09:47:28
24 capable of assessing epidemiologic studies 09:47:36
25 for the adequacy of their control of biases 09:47:40



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1 and confounders than you were on 9-12-97? 09:47:44
2 A. No, I am not. 09:47:44
3 Q. Okay. And you are not -- 09:47:44
4 That's not your area? 09:47:46
5 A. That is not my area of 09:47:46
6 expertise. 09:47:48
7 Q. And you are not comfortable with 09:47:50
8 or capable of engaging in that type of 09:47:52
9 analysis? 09:47:54
10 A. You are correct. 09:47:54
11 Q. I take it that you are -- you're 09:48:02
12 still not familiar with the various sets of 09:48:06
13 criteria for causal inference that appear in 09:48:10
14 the peer review published literature; is that 09:48:14
15 right?
16 A. Not any different from what I 09:48:18
17 was then. 09:48:18
18 Q. Okay. And to be specific, you 09:48:22
19 cannot name for me, today, the various sets 09:48:26
20 of criteria for assessing the issue of causal 09:48:30
21 inference that appear in the peer review 09:48:34
22 published literature? 09:48:36
23 A. You are correct. 09:48:36
24 Q. You don't know how many sets of 09:48:38
25 criteria for causal inference there are in 09:48:42



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1 the generally-accepted literature? 09:48:44
2 A. You are correct. 09:48:44
3 Q. Okay. And you cannot name for 09:48:50
4 me or describe in any detail any one of 09:48:56
5 the -- any one criterion that is contained in 09:49:00
6 any of the sets of criteria for causal 09:49:02
7 inference in the literature; is that true? 09:49:06
8 A. You are correct. 09:49:08
9 Q. And causal inference, just so 09:49:16
10 we're clear on it, is the process by which a 09:49:20
11 scientist, an epidemiologist, or a medical 09:49:26
12 practitioner reaches conclusions or opinions 09:49:32
13 regarding the issue of causation. Is that 09:49:38
14 what causal inference is? 09:49:40
15 A. Would you repeat that? 09:49:46
16 Q. Sure. Causal inference -- the 09:49:50
17 process of causal inference is the process by 09:49:52
18 which scientists, medical practitioners, and 09:49:56
19 others reach opinions regarding the issue of 09:50:00
20 causation. That's what it means. 09:50:06
21 A. That's one definition. 09:50:06
22 Q. All right. Are you familiar 09:50:14
23 with other definitions of causal inference? 09:50:16
24 A. I would say that I cannot define 09:50:26
25 what you want defined, but -- and I don't 09:50:28



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1 know what you're driving at at this time. 09:50:34
2 From review of the literature, I have one 09:50:38
3 opinion of what causes certain diseases; but 09:50:42
4 I cannot give you the scientific definition 09:50:44
5 of that. 09:50:46
6 Q. Okay. 09:50:46
7 A. So I may be totally ignorant in 09:50:50
8 what you're asking me. 09:50:50
9 Q. Okay. All right. You know that 09:51:00
10 there are entire chapters in books and, 09:51:04
11 indeed, entire books on the subject of causal 09:51:08
12 inference? 09:51:08
13 A. Supposedly there are. 09:51:12
14 Q. Okay. You have not reviewed in 09:51:18
15 any systematic or detailed way that body of 09:51:22
16 literature? 09:51:22
17 A. The theoretical body of 09:51:26
18 literature on the subject? 09:51:28
19 Q. The body of literature that 09:51:30
20 discusses the precise generally-accepted 09:51:32
21 criteria for assessing the issue of causal 09:51:38
22 inference. 09:51:38
23 A. No, I haven't. 09:51:38
24 Q. You have not. 09:51:40
25 And since you are not familiar 09:51:44



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1 with the various sets of criteria, you have 09:51:46
2 not engaged in any type of scientific 09:51:50
3 analysis in an attempt to assess which set of 09:51:54
4 criteria is most appropriate in your opinion? 09:51:58
5 A. You are correct. 09:51:58
6 Q. All right. And the scientific 09:52:02
7 method requires one, before one selects an 09:52:10
8 appropriate set of criteria on a scientific 09:52:12
9 issue, to review all of the available 09:52:14
10 generally-accepted sets? That's what the 09:52:18
11 scientific method requires? 09:52:20
12 A. Probably, yes. 09:52:24
13 Q. Okay. You don't pick the 09:52:26
14 criteria that you believe are correct without 09:52:28
15 first familiarizing yourself with what 09:52:32
16 criteria are available? 09:52:34
17 A. I don't understand you. 09:52:36
18 Q. Okay. You've got a number of 09:52:40
19 different sets of criteria for assessing 09:52:42
20 causal inference. It wouldn't be consistent 09:52:46
21 with the scientific method to pick one 09:52:48
22 without first familiarizing yourself with 09:52:50
23 what you're available? 09:52:50
24 A. I don't understand you. 09:52:52
25 Q. Okay. 09:52:52



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1 A. I mean, I'm not an expert in 09:53:00
2 that area. 09:53:02
3 Q. Okay. You're not an expert in 09:53:04
4 the area of causal inference? 09:53:06
5 A. No. 09:53:06
6 Q. Okay. You're not an expert in 09:53:06
7 the area of applying the scientifically- 09:53:14
8 correct and valid and generally-accepted 09:53:18
9 elements of causal inference to particular 09:53:24
10 diseases or risk factors? 09:53:26
11 A. No. 09:53:26
12 Q. Okay. To the extent that you 09:53:40
13 rely upon any epidemiologic or other 09:53:44
14 scientific studies in giving your opinions in 09:53:48
15 this case, you haven't evaluated them with 09:53:50
16 respect to issues of internal or external 09:53:52
17 validity; is that right? 09:53:56
18 A. Not to the depth that you would 09:53:58
19 like it to be done, let me put it that way. 09:54:00
20 Q. Okay. For example, you have 09:54:02
21 not, for any study on which you may rely or 09:54:06
22 do rely in this case, assessed the issue of 09:54:10
23 adequacy of control of confounders? 09:54:16
24 A. Not in all of the cases, no, I 09:54:18
25 haven't. 09:54:18



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1 Q. Can you name a study for me, 09:54:22
2 Doctor, on which you rely in this case, which 09:54:24
3 you have examined, in a statistical or other 09:54:28
4 scientifically-valid sense, its adequacy of 09:54:34
5 control of -- 09:54:34
6 A. No, I can't. 09:54:36
7 Q. Okay. And you don't recall 09:54:36
8 having done that for any study? 09:54:38
9 A. I don't remember having done 09:54:40
10 that in a long time. 09:54:42
11 Q. Okay. And your answer would be 09:54:44
12 the same if I asked you about the adequacy of 09:54:48
13 controls for biases in the data? You haven't 09:54:54
14 done that either? 09:54:54
15 A. No, I haven't. 09:54:56
16 Q. And your answer would be the 09:55:00
17 same if I were to ask you about the adequacy 09:55:02
18 of cohort selection in any of the studies? 09:55:06
19 A. I don't remember that. 09:55:08
20 Q. Okay. You have not reviewed any 09:55:12
21 of the epidemiologic or other scientific 09:55:14
22 studies with respect to the issue of cohort 09:55:18
23 selection and evaluated them in a 09:55:20
24 scientifically-valid way? 09:55:22
25 A. Not in a detailed form, no. 09:55:24



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1 Q. Well, you say, "Not in a 09:55:28
2 detailed form." You haven't done it in a way 09:55:30
3 that would reveal fatal flaws or errors in 09:55:36
4 the methodologies of the studies? 09:55:38
5 A. No, I haven't because that's 09:55:40
6 outside of my area of expertise. 09:55:40
7 Q. Okay. You wouldn't be 09:55:44
8 comfortable in even attempting to do that 09:55:46
9 because that's not your area? 09:55:48
10 A. Nor I have the time. 09:55:50
11 Q. Okay. The biologic process by 09:56:04
12 which a risk factor may cause a disease -- 09:56:10
13 and by that, I mean the precise alterations 09:56:12
14 in the cellular metabolism -- is something 09:56:16
15 that is also beyond the scope of your 09:56:18
16 expertise? Do you agree with that? 09:56:22
17 A. Correct. 09:56:22
18 Q. You are in no way familiar with 09:56:34
19 the body of literature on environmental 09:56:38
20 tobacco smoke? That's true? 09:56:40
21 A. Repeat that question. 09:56:44
22 Q. You are not familiar with the 09:56:44
23 body of literature and have not examined or 09:56:46
24 studied in any systematic way the body of 09:56:50
25 literature that relates to environmental 09:56:52



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1 tobacco smoke? That's true? 09:56:56
2 A. You have two questions there. 09:56:58
3 Q. Let me break it down, then. 09:57:00
4 Environmental tobacco smoke is 09:57:02
5 not your area? That's true? 09:57:04
6 A. It is not my area. 09:57:06
7 Q. You have not performed a 09:57:08
8 systematic review of the literature on the 09:57:12
9 issue of environmental tobacco smoke? 09:57:14
10 A. No, I have not. 09:57:16
11 Q. You have not, for example, 09:57:18
12 compared studies which have found no 09:57:30
13 statistically significant association between 09:57:32
14 ETS and disease with other types of studies? 09:57:36
15 A. What is ETS? 09:57:36
16 Q. Environmental tobacco smoke. 09:57:40
17 A. What is environmental tobacco 09:57:42
18 smoke? 09:57:44
19 Q. Okay. Let's cut this short. 09:57:44
20 You're not even sure what 09:57:44
21 environmental tobacco smoke is?
22 A. I mean, it's that secondhand 09:57:46
23 smoke? 09:57:48
24 Q. Do you know what environmental 09:57:50
25 tobacco smoke is as that term of art is used 09:57:54



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1 in the peer review and scientific literature? 09:57:58
2 A. No. 09:57:58
3 Q. Okay. All right. You have not 09:58:04
4 engaged in a systematic review of the 09:58:06
5 literature regarding secondhand smoke? 09:58:10
6 A. No. 09:58:10
7 Q. You are not an expert on 09:58:12
8 secondhand smoke? 09:58:14
9 A. No, I'm not. 09:58:14
10 Q. Have you seen any data of any 09:58:36
11 type regarding the Oklahoma Medicaid 09:58:40
12 population? 09:58:40
13 A. No, I haven't. 09:58:44
14 Q. Have you seen any data of any 09:58:46
15 type regarding the pre-Medicaid charity care 09:58:50
16 population in Oklahoma? 09:58:52
17 A. The "pre" what? 09:58:54
18 Q. Pre-Medicaid charity care 09:58:56
19 population in Oklahoma. 09:58:56
20 A. No, I haven't. 09:58:58
21 Q. Have you seen any data of any 09:59:00
22 type regarding the population of persons in 09:59:04
23 Oklahoma who are covered by state-sponsored 09:59:08
24 medical insurance? 09:59:08
25 A. No, I haven't. 09:59:10



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1 Q. Do you know the first thing 09:59:10
2 about any of those three populations? 09:59:14
3 A. I don't know anything about it. 09:59:16
4 Q. Okay. You have no opinions in 09:59:18
5 this case regarding the Oklahoma Medicaid 09:59:20
6 population, specifically? 09:59:20
7 A. I have none. 09:59:22
8 Q. Okay. You have no opinions in 09:59:24
9 this case regarding the pre-Medicaid charity 09:59:26
10 care population in Oklahoma? 09:59:28
11 A. No, I have none. 09:59:30
12 Q. You have no opinions in this 09:59:30
13 case regarding the population of persons who 09:59:34
14 are covered by state-sponsored medical 09:59:38
15 insurance? 09:59:40
16 A. No, I have none. 09:59:44
17 Q. Do we know, for example, Doctor, 09:59:52
18 how many -- or what percentage of Oklahoma 09:59:56
19 Medicaid recipients have lung cancer that has 10:00:02
20 metastasized from the lip or from some other 10:00:06
21 cancer site? Do we know that from any data? 10:00:10
22 A. No. 10:00:14
23 Q. All right. In order to 10:00:16
24 determine that, you would have to look at 10:00:18
25 patient-specific information, obviously? 10:00:22



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1 A. Correct. 10:00:22
2 Q. There is no way known to science 10:00:24
3 of making that determination without looking 10:00:30
4 at patient-specific information. Do you 10:00:34
5 agree with that? 10:00:34
6 A. I don't know. 10:00:36
7 Q. All right. You are unaware of 10:00:36
8 any means known to science of making that 10:00:38
9 determination without looking at 10:00:40
10 patient-specific information? 10:00:42
11 A. I don't know. 10:00:42
12 Q. Okay. Can you name for me a way 10:00:46
13 that is known to science of making that 10:00:48
14 determination without -- 10:00:48
15 A. I don't know. 10:00:50
16 Q. -- examining patient-specific 10:00:54
17 information? 10:00:54
18 A. I do not know. 10:00:54
19 Q. Does that mean you can't name 10:00:56
20 for me a way that is known to science of 10:00:58
21 making that determination without -- 10:01:00
22 A. I can't. 10:01:00
23 Q. You cannot? You don't know of 10:01:02
24 one? 10:01:02
25 A. I don't. 10:01:04



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1 Q. You do know that you would have 10:01:06
2 to see patient-specific information to make 10:01:10
3 that determination? 10:01:10
4 A. Probably, yes. 10:01:16
5 Q. Well, to assess the issue of 10:01:20
6 metastasis, you would have to know for a 10:01:24
7 particular patient whether he had a primary 10:01:28
8 cancer at another site, wouldn't you? 10:01:30
9 A. That's correct. 10:01:30
10 Q. And there's no way you can do 10:01:32
11 that without patient-specific information; is 10:01:34
12 that --
13 A. Correct. 10:01:34
14 Q. Okay. In your -- in your 10:01:52
15 disclosure, the first entry says that smoking 10:02:04
16 is the single most preventable cause of 10:02:08
17 cancer and death in America and Texas today. 10:02:10
18 A. Correct. 10:02:16
19 Q. Okay. Do you know what that has 10:02:18
20 to do with the Oklahoma case? You talk about 10:02:24
21 Texas there. 10:02:24
22 A. In the extent that Oklahoma 10:02:34
23 belongs to America, it's true. 10:02:36
24 Q. Okay. Do you know what your 10:02:38
25 statement regarding Texas has to do with 10:02:40



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1 Oklahoma? 10:02:40
2 A. That they're neighboring states. 10:02:42
3 Q. Okay. 10:02:42
4 A. And if a Texan moves to Oklahoma 10:02:50
5 and he is an IA (phonetic), it improves the 10:02:52
6 IQ of both states. 10:02:54
7 MR. STEED: Objection; nonresponsive. 10:02:56
8 MR. ROWLEY: I think it was extremely 10:02:58
9 responsive. 10:03:00
10 10:03:02
11 [Laughter.]
12
13 BY MR. ROWLEY: 10:03:04
14 Q. All right. 10:03:04
15 A. Unless you want to exclude 10:03:06
16 Oklahoma from America. 10:03:08
17 Q. Okay. Well, let me -- let me 10:03:08
18 ask you this way: Is skin cancer from 10:03:12
19 sunlight exposure preventable? 10:03:14
20 A. Yes, it is. 10:03:16
21 Q. Is it less preventable than 10:03:24
22 diseases that have been associated with 10:03:26
23 smoking? 10:03:26
24 A. Is it less preventable? 10:03:34
25 Q. Yeah. 10:03:36



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1 A. I don't know. 10:03:36
2 Q. You don't know. So you don't 10:03:38
3 know whether smoking is the single most 10:03:40
4 preventable cause of any disease? 10:03:44
5 A. Smoking is the single most cause 10:03:50
6 of preventable disease, but skin -- sun 10:03:54
7 exposure will affect only white people. 10:03:58
8 Q. Okay. Let me ask you this: Is 10:04:00
9 skin cancer from sun exposure more 10:04:04
10 preventable or not? 10:04:04
11 A. No, it is not. 10:04:06
12 Q. Is it less preventable? 10:04:10
13 A. Less preventable? It's 10:04:12
14 preventable. What do you mean by "less 10:04:16
15 preventable"? 10:04:16
16 Q. Well, here in Opinion No. 1, you 10:04:18
17 use the phrase "most preventable." 10:04:20
18 A. Numberwise it's the most 10:04:22
19 preventable disease. 10:04:24
20 Q. Most preventable does not mean 10:04:26
21 most easily prevented? 10:04:28
22 A. No. 10:04:30
23 Q. It doesn't mean that? 10:04:30
24 A. Hum-um. It means the most 10:04:32
25 preventable numberwise. If you prevent -- 10:04:36



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1 Q. Most preventable --
2 A. If you prevent smoking, you can 10:04:38
3 control the -- a larger number of cancer. 10:04:40
4 Q. Okay. Let me ask you this: 10:04:42
5 Most preventable does not mean -- it's not 10:04:50
6 similar to more preventable? 10:04:58
7 A. Most preventable does not mean 10:05:00
8 the same than more preventable? I don't know 10:05:04
9 what you mean. 10:05:04
10 Q. By "most preventable" you're 10:05:06
11 saying you don't mean more easily prevented. 10:05:10
12 A. It's more -- it's not easily. 10:05:12
13 It's preventable. 10:05:14
14 Q. Okay. You do not mean by the 10:05:14
15 phrase "most preventable" more easily 10:05:18
16 prevented; is that true? 10:05:20
17 A. Well, it's tough to prevent; but 10:05:22
18 it's preventable. 10:05:24
19 Q. By the phrase "most 10:05:26
20 preventable," do you mean that it is -- do 10:05:32
21 you refer to the ease by which it is 10:05:34
22 prevented? 10:05:34
23 A. I refer to the potential of 10:05:38
24 being preventable. 10:05:38
25 Q. Okay. You agree that only a 10:05:56



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1 very, very small percentage of lifetime 10:06:00
2 pack-a-day smokers will contract esophageal 10:06:08
3 cancer? That's true? 10:06:10
4 A. Let's rephrase that, please. 10:06:10
5 Q. Only a very small percentage of 10:06:12
6 lifetime pack-a-day smokers will get 10:06:14
7 esophageal cancer? 10:06:18
8 A. Yes. 10:06:18
9 Q. And non- -- some nonsmokers get 10:06:22
10 esophageal cancer? 10:06:26
11 A. Correct. 10:06:26
12 Q. Even a smaller percentage of 10:06:28
13 lifetime pack-a-day smokers will get 10:06:30
14 laryngeal cancer? That's true? 10:06:38
15 A. Rephrase that. 10:06:40
16 Q. An even smaller percentage of 10:06:42
17 lifetime pack-a-day smokers will get 10:06:44
18 laryngeal cancer compared to esophageal 10:06:50
19 cancer? 10:06:50
20 A. I don't know. 10:06:52
21 Q. Well, you agree that it's a 10:06:52
22 fraction of 1 percent? 10:06:54
23 A. Yes. 10:06:56
24 Q. It's a fraction of 1 percent for 10:06:58
25 both esophageal and laryngeal cancer? 10:07:02



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1 A. Yes. 10:07:02
2 Q. Since you have seen no data from 10:07:06
3 the Oklahoma Medicaid population, you cannot 10:07:12
4 say with any scientific certainty that there 10:07:16
5 are any persons with respect to whom the 10:07:22
6 State seeks to recover medical expenditures 10:07:24
7 who have esophageal cancer and who smoked and 10:07:32
8 whose cancer was caused by smoking? That's 10:07:36
9 true?
10 A. Will you simplify the question, 10:07:38
11 please? 10:07:40
12 Q. Sure. Since you've seen no data 10:07:42
13 from the Oklahoma Medicaid population, you 10:07:44
14 can't say with any degree of certainty that 10:07:50
15 there are any numbers of that population with 10:07:54
16 respect to whom the State seeks to recover 10:07:56
17 medical expenditures who had esophageal 10:08:00
18 cancer. That's true. You haven't seen any 10:08:06
19 data. 10:08:06
20 A. No, I haven't. 10:08:06
21 Q. Okay. And you can't say that 10:08:10
22 there is even one person within that 10:08:12
23 population, the population with respect to 10:08:16
24 whom the State seeks to recover medical 10:08:18
25 expenditures, that had laryngeal cancer from 10:08:22



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1 any cause or source? That's true? 10:08:26
2 A. I don't know. 10:08:26
3 Q. You can't say that it's true, 10:08:28
4 can you? 10:08:28
5 A. No, I can't. 10:08:28
6 Q. Okay. All right. Head and neck 10:08:36
7 cancers are comparatively rare cancers, 10:08:40
8 aren't they? 10:08:40
9 A. Correct. 10:08:40
10 Q. For example, prostate cancer is 10:08:46
11 much, much more prevalent than head and neck 10:08:48
12 cancer? 10:08:48
13 A. Correct. 10:08:48
14 Q. Even if you take all head and 10:08:50
15 neck cancers, which are actually different 10:08:52
16 cancers, and lump them together; is that 10:08:56
17 true? 10:08:56
18 A. Correct. 10:08:56
19 Q. And I think that you've said 10:09:00
20 that if men were to live long enough, all or 10:09:10
21 virtually all of them would get prostate 10:09:12
22 cancer. 10:09:12
23 A. That's what the data so far 10:09:14
24 seems to imply. 10:09:16
25 Q. Okay. So if men live to be 100, 10:09:20



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1 something like 90-plus percent of them would 10:09:24
2 have prostate cancer? 10:09:24
3 A. Yes. It's the logic, prostate 10:09:30
4 cancer. 10:09:32
5 Q. Sure. Okay. Doctor, do we know 10:09:36
6 which or what percentage of the Oklahoma 10:09:38
7 Medicaid population has laryngeal cancer due 10:09:44
8 to alcohol use? 10:09:46
9 A. I don't. 10:09:46
10 Q. In order to determine that in a 10:09:50
11 scientifically-valid way, one would have to 10:09:52
12 have patient-specific information? 10:09:54
13 A. Correct. 10:09:56
14 Q. In order to determine the cause 10:10:10
15 of any head and neck cancer within the 10:10:14
16 Oklahoma Medicaid population in a 10:10:16
17 scientifically-valid way, one would have to 10:10:20
18 have patient-specific information? 10:10:22
19 A. What are you asking? 10:10:26
20 Q. Well, let me give you an 10:10:28
21 example. In order to determine which numbers 10:10:30
22 of the Oklahoma Medicaid population developed 10:10:34
23 head and neck cancer due to poor dental 10:10:40
24 hygiene or lack of regular dental care or 10:10:44
25 poor oral dentition, one would have to have 10:10:48



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1 patient-specific information, right? 10:10:52
2 A. That is provided that you assume 10:10:54
3 that to be a cause of the factor. 10:10:56
4 Q. Okay. There is an established 10:10:58
5 association between poor dental hygiene and 10:11:02
6 certain head and neck cancers, isn't there? 10:11:06
7 A. Yes, there is. 10:11:10
8 Q. In fact, the majority of head 10:11:12
9 and neck cancer patients have poor oral 10:11:16
10 dentition. 10:11:16
11 A. No. 10:11:18
12 Q. You disagree with that? 10:11:20
13 A. Yes, I do. A good number of 10:11:26
14 patients have poor dental hygiene, but it 10:11:32
15 does not mean that all of them do. 10:11:32
16 Q. Okay. I didn't ask you -- Let 10:11:34
17 me make sure that this is clear. Do you 10:11:36
18 agree with the statement, quote, the majority 10:11:38
19 of head and neck cancer patients, comma, for 10:11:42
20 example, comma, have poor oral dentition, 10:11:44
21 period, close quote? 10:11:46
22 A. Yeah. 10:11:46
23 Q. You do agree with that? 10:11:48
24 A. Majority? I don't know if it's 10:11:50
25 exactly the majority, but a good number of 10:11:52



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1 them. 10:11:52
2 Q. Okay. That's roughly correct, 10:11:54
3 isn't it? 10:11:54
4 A. Roughly it could be assumed to 10:11:56
5 be correct. 10:11:58
6 Q. Okay. And there is an 10:11:58
7 association between poor oral dentition and 10:12:02
8 head and neck cancer, isn't there? 10:12:04
9 A. Yes, there is. 10:12:10
10 Q. All right. And in order to know 10:12:12
11 which Oklahoma Medicaid recipients with head 10:12:18
12 and neck cancer have it because of their poor 10:12:20
13 oral dentition, one would have to have 10:12:22
14 patient-specific information? 10:12:24
15 A. Yes, you do. 10:12:26
16 Q. In order to know which Oklahoma 10:12:36
17 Medicaid recipients have oral cavity cancer 10:12:40
18 or oral pharyngeal cancer due to lowered 10:12:46
19 plasma Vitamin A levels, one would have to 10:12:48
20 have patient-specific information? That's 10:12:56
21 true?
22 A. Yes, you do. 10:12:58
23 Q. All right. Is marijuana use 10:13:04
24 associated with laryngeal cancer? 10:13:08
25 A. Not that it has been proven 10:13:10



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1 beyond one single study, only, that showed 10:13:14
2 that to be. But there is -- None has never 10:13:18
3 has been duplicated. 10:13:20
4 Q. What kind of study was that? 10:13:22
5 A. There was one that was done in 10:13:24
6 California, I think. 10:13:24
7 Q. Do you know who did it? 10:13:28
8 A. Paul Donald, I think, is one of 10:13:30
9 the co-authors. 10:13:32
10 Q. Do you agree with the 10:13:34
11 statement: Marijuana is a causative agent -- 10:13:40
12 Well, let's see. 10:13:42
13 Do you agree that marijuana is a 10:13:52
14 risk factor for laryngeal cancer? 10:13:56
15 A. We don't know. 10:13:58
16 Q. Not known? 10:13:58
17 A. We don't know. 10:14:00
18 Q. Does that mean that it has not 10:14:04
19 been studied adequately to date? 10:14:06
20 A. In the case of the marijuana, 10:14:08
21 yes. 10:14:08
22 Q. Is it a suspected causative 10:14:18
23 agent? 10:14:18
24 A. Not in my books. 10:14:20
25 Q. Why not? 10:14:26



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1 A. Because it's only one or two 10:14:28
2 studies that showed that, and they were not 10:14:30
3 very controlled. 10:14:32
4 Q. What do you mean, not 10:14:32
5 controlled? 10:14:34
6 A. There were -- Really there was 10:14:34
7 no comparison between the nonsmoking 10:14:36
8 population. They inferred that because these 10:14:40
9 were -- I mean, there's only one study that 10:14:42
10 showed that. This one by Donald in 10:14:46
11 California is the only one I recall. And I 10:14:48
12 think in that chapter -- If you are showing 10:14:48
13 that chapter, look up the reference. 10:14:52
14 Probably Paul Donald. 10:14:54
15 Q. Are there studies that have 10:14:58
16 revealed no statistically significant 10:15:00
17 association between marijuana use and 10:15:04
18 laryngeal cancer? 10:15:06
19 A. I don't remember right now. 10:15:08
20 Q. In order to determine which 10:15:12
21 Oklahoma Medicaid recipients with tongue 10:15:16
22 cancer had tongue cancer because of syphilis, 10:15:20
23 one would have to have patient-specific 10:15:22
24 information? 10:15:24
25 A. Yes, you do. 10:15:24



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1 Q. In order to determine which 10:15:26
2 Oklahoma Medicaid recipients have esophageal 10:15:32
3 cancer due to iron deficiency, one would have 10:15:34
4 to have patient-specific information? 10:15:36
5 A. Yes, you do. 10:15:38
6 Q. In order to determine which or 10:15:44
7 what percentage or how many Oklahoma Medicaid 10:15:48
8 recipients who have esophageal adenocarcinoma 10:15:54
9 due to irritation of the esophagus from 10:15:54
10 gastric reflux in a scientifically-valid way, 10:16:00
11 one would have to have patient-specific 10:16:02
12 information? That's true? 10:16:04
13 A. Yes, you do. 10:16:06
14 Q. In order to determine which or 10:16:08
15 how many Oklahoma Medicaid recipients have 10:16:12
16 nasopharyngeal carcinoma caused by the 10:16:16
17 Epstein-Barr virus, one would have to have 10:16:22
18 patient-specific information? 10:16:24
19 A. Yes, you do. 10:16:24
20 Q. And so I don't have to go -- 10:16:30
21 list all of the risk factors and known and 10:16:34
22 suspected causes of head and neck cancer, it 10:16:36
23 is true that in order to assess in any 10:16:40
24 scientifically-valid way how many or what 10:16:46
25 percentage of the Oklahoma Medicaid 10:16:48



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1 population have any type of head and neck 10:16:52
2 cancer from any risk factor, one would have 10:16:54
3 to have patient-specific information? That's 10:16:56
4 true? 10:16:56
5 A. And what do you mean by 10:16:58
6 "patient-specific information"? What 10:17:00
7 information? 10:17:00
8 Q. One would have to have the type 10:17:02
9 of information that you gather in the 10:17:06
10 treatment of your patients. For example, a 10:17:08
11 patient history, information on the results 10:17:12
12 of physical examination, and similar 10:17:14
13 information. That's true? 10:17:18
14 A. Okay. Correct. 10:17:20
15 Q. And just so I don't have to go 10:17:22
16 through all the list of risk factors for head 10:17:26
17 and neck cancer, that's true for all risk 10:17:30
18 factors, isn't it? 10:17:30
19 A. Very likely. 10:17:32
20 Q. You can't think of any exception 10:17:34
21 to that rule, right? 10:17:36
22 A. I don't know any exception. If 10:17:38
23 you're thinking of a specific population, I 10:17:40
24 don't see an exception. 10:17:42
25 Q. Okay. Now -- And you would 10:17:46



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1 consider the Oklahoma Medicaid population to 10:17:48
2 be a specific population, wouldn't you? 10:17:50
3 A. That's Oklahoma Medicaid 10:17:50
4 population, yeah.
5 Q. That's a specific population, 10:17:54
6 isn't it? 10:17:54
7 A. It is Oklahoma Medicaid 10:17:58
8 population. That's what you want to know, 10:17:58
9 and I'm not an expert in it. 10:18:00
10 Q. Okay. In your last deposition 10:18:10
11 we covered in some detail a number of risk 10:18:14
12 factors for each of the types of head and 10:18:18
13 neck cancer that are mentioned in your 10:18:20
14 disclosure. Do you recall that? 10:18:22
15 A. Vaguely. 10:18:24
16 Q. Okay. You do recall that we 10:18:24
17 discussed risk factors? 10:18:26
18 A. Yes, we did. 10:18:26
19 Q. Have any of the risk factors 10:18:30
20 that we've discussed in your prior deposition 10:18:32
21 been shown since that time not to be risk 10:18:36
22 factors? 10:18:38
23 A. I don't remember. 10:18:40
24 Q. Okay. Can you think of any new 10:18:44
25 medical or scientific studies, since your 10:18:48



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1 deposition on 9-12-97, that have established 10:18:50
2 or proven that any of the risk factors for 10:18:56
3 head and neck cancer are no longer considered 10:19:00
4 risk factors? 10:19:00
5 A. No. 10:19:02
6 Q. And let's just be clear on it. 10:19:12
7 If you testify at trial and you're asked 10:19:14
8 whether a particular exposure or 10:19:16
9 characteristic or condition is a risk factor 10:19:20
10 and you said that it was, in your Texas 10:19:24
11 deposition, you're going to acknowledge that 10:19:26
12 it is if you testify -- 10:19:26
13 A. If I testify again, it will be 10:19:30
14 the same. 10:19:30
15 Q. Okay. Very good. 10:19:30
16 And there are still risk factors 10:19:36
17 for head and neck cancer which science simply 10:19:42
18 has not identified yet? 10:19:44
19 A. Correct. 10:19:44
20 Q. You have no information on the 10:20:00
21 smoking habits of the Oklahoma Medicaid 10:20:02
22 population? 10:20:02
23 A. I don't have any. 10:20:04
24 Q. And you haven't considered any 10:20:06
25 such information in formulating your 10:20:08



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1 opinions? 10:20:08
2 A. I haven't. 10:20:08
3 Q. You know nothing about smoking 10:20:14
4 prevalence within that population? 10:20:16
5 A. I don't. 10:20:16
6 Q. Or how many packs per day were 10:20:20
7 smoked? 10:20:20
8 A. I don't. 10:20:22
9 Q. Or what types of cigarettes were 10:20:24
10 smoked? 10:20:24
11 A. I don't. 10:20:24
12 Q. Or whether there was inhalation? 10:20:28
13 A. I don't. 10:20:28
14 Q. Okay. You still agree that the 10:20:40
15 authors of head and neck cancer literature 10:20:44
16 frequently disagree with respect to the issue 10:20:52
17 of the relative importance of various risk 10:20:52
18 factors for head and neck cancer? 10:20:54
19 A. That the authors -- 10:20:54
20 Q. -- tend to disagree with respect 10:20:56
21 to the relative importance of various risk 10:20:58
22 factors? 10:20:58
23 A. The relative, yes. You just 10:21:06
24 showed an example. 10:21:06
25 Q. Okay. Now -- The example is 10:21:08



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1 marijuana? 10:21:10
2 A. Yes. 10:21:10
3 Q. There are experts who disagree 10:21:12
4 with you? 10:21:12
5 A. Yes. 10:21:12
6 Q. And that's the nature of 10:21:14
7 science -- 10:21:14
8 A. Correct. 10:21:16
9 Q. -- there is almost always 10:21:16
10 disagreement? 10:21:18
11 A. Correct. 10:21:18
12 Q. The last time I took your 10:21:30
13 deposition we talked about whether there was 10:21:36
14 controversy regarding the relationship 10:21:40
15 between smoking and the cancers that are 10:21:42
16 referred to in your Summary of Opinions in 10:21:48
17 fields other than your field. And you told 10:21:52
18 me that you didn't know anything about what 10:21:54
19 was known or discussed in other fields. Is 10:21:56
20 that still true? 10:21:56
21 A. You're correct. 10:21:58
22 Q. And so to the extent that your 10:22:02
23 disclosure indicates that you believe that 10:22:04
24 there is not a controversy, that's limited to 10:22:08
25 your field? 10:22:08



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1 A. That's limited to head and neck. 10:22:08
2 Q. It's limited to -- 10:22:10
3 A. My field. 10:22:12
4 Q. -- your field, head and neck 10:22:14
5 cancer surgery? 10:22:14
6 A. Head and neck cancer. 10:22:16
7 Q. Okay. You cannot comment and 10:22:18
8 will not comment regarding the opinions that 10:22:24
9 have been published by other types of 10:22:26
10 scientists, for example, laboratory 10:22:30
11 scientists or genetic scientists? That's 10:22:36
12 true? 10:22:36
13 A. That is correct only to the 10:22:38
14 extent that it is head and neck cancer. 10:22:40
15 Q. All right. Your testimony is 10:22:42
16 limited to head and neck cancer? 10:22:46
17 A. Head and neck cancer. 10:22:46
18 Q. And it is limited to whether 10:22:54
19 there is -- whether you perceive there to be 10:22:58
20 a controversy among the clinicians with which 10:23:04
21 you deal? That's true? 10:23:06
22 A. Yes. 10:23:06
23 Q. Okay. You are not in a position 10:23:12
24 to comment in any way on whether there is a 10:23:14
25 controversy among scientists in other fields 10:23:20



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1 regarding head and neck cancer causation? 10:23:22
2 A. In other fields? 10:23:26
3 Q. Nonclinician -- among 10:23:26
4 nonclinicians. 10:23:30
5 A. Repeat that again. 10:23:30
6 Q. Sure. You're not in a 10:23:32
7 position -- Well, let me -- let me ask 10:23:34
8 you -- back up a little bit and ask you 10:23:36
9 different questions. 10:23:36
10 Have you reviewed in any 10:23:38
11 systematic way the body of experimental 10:23:42
12 research on the issue of -- to the extent 10:23:54
13 that it comments on the issue of causal 10:23:56
14 inference for head and neck cancer? 10:23:58
15 A. Yes, I have. 10:24:00
16 Q. Okay. 10:24:00
17 A. To the extent that it's 10:24:02
18 clinically relevant. 10:24:04
19 Q. Okay. All right. You're not a 10:24:08
20 geneticist? 10:24:10
21 A. I'm not a geneticist. 10:24:12
22 Q. Okay. Genetics is not your 10:24:14
23 field? 10:24:14
24 A. It is not my field. 10:24:16
25 Q. Okay. You're not going to 10:24:16



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1 comment on the validity or invalidity of 10:24:20
2 opinions that are expressed in genetics 10:24:24
3 literature because that's not your area -- 10:24:26
4 A. Pure genetics is not my area. 10:24:30
5 Q. Okay. You've never performed, 10:24:32
6 designed, or published an experimental study 10:24:36
7 on genetic issues? 10:24:40
8 A. No, I haven't. 10:24:40
9 Q. Is the Journal of the American 10:25:10
10 Medical Association an authoritative journal, 10:25:12
11 in your opinion? 10:25:12
12 A. Yes, it is. 10:25:14
13 Q. Is the publication 10:25:16
14 Hematology/Oncology Clinics of North America 10:25:20
15 an authoritative publication? 10:25:22
16 A. Yes, it is. 10:25:24
17 Q. Is the New England Journal of 10:25:30
18 Medicine, in your opinion, an authoritative 10:25:34
19 publication? 10:25:34
20 A. Yes, it is. 10:25:36
21 Q. Is the publication Texas 10:25:42
22 Medicine, in your opinion, an authoritative 10:25:46
23 publication? 10:25:46
24 A. You have to define 10:25:50
25 "authoritative" and "scientific." 10:25:52



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1 Q. Sure. Okay. By 10:25:54
2 "authoritative," I mean simply to ask 10:25:56
3 whether it is reasonably relied upon -- 10:25:58
4 A. Yes, it is. 10:25:58
5 Q. Okay. It's reasonably relied 10:26:00
6 upon by people in your field as a reference 10:26:04
7 source? 10:26:04
8 A. Yes, it is. 10:26:06
9 Q. Okay. 10:26:06
10 A. An opinion source. 10:26:08
11 Q. Sure. 10:26:08
12 A. Okay. 10:26:10
13 Q. As a source of information? 10:26:12
14 A. As a source of information, 10:26:14
15 that's correct. 10:26:14
16 Q. Okay. You're familiar with the 10:26:18
17 publication Complications in Otolaryngology 10:26:22
18 Head and Neck Surgery? 10:26:24
19 A. Correct. 10:26:24
20 Q. Is that authoritative? 10:26:26
21 A. Yes. 10:26:28
22 Q. You're familiar with the 10:26:28
23 publication Current Therapy in 10:26:30
24 Otolaryngology, Head and Neck Surgery? 10:26:34
25 A. Which is -- Yes. Yes, it is. 10:26:38



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1 Q. That's authoritative? Yes? 10:26:40
2 A. Yes. 10:26:42
3 Q. Cancer Medicine is 10:26:44
4 authoritative? 10:26:46
5 A. Yes, it is. 10:26:48
6 Q. That's a book? 10:26:50
7 A. That's a book, yes. 10:26:50
8 Q. Do you have that book? 10:26:52
9 A. Yes. I mean, I have referenced 10:26:54
10 the book; but I don't have the particular -- 10:26:58
11 Q. Okay. The book is available to 10:26:58
12 you for a reference? 10:27:00
13 A. Yes. 10:27:00
14 Q. You're familiar with a book 10:27:04
15 called Advances in the Diagnosis and Therapy 10:27:08
16 of Lung Cancer? 10:27:10
17 A. By Dr. Roth? 10:27:12
18 Q. Drs. Roth, Cox -- 10:27:14
19 A. Yes.
20 Q. -- and Hong? 10:27:14
21 A. Yes. 10:27:16
22 Q. That's authoritative? Is that 10:27:18
23 correct? 10:27:18
24 A. That's correct. 10:27:20
25 Q. Is the journal Cancer 10:27:22



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1 authoritative? 10:27:22
2 A. Yes, it is. 10:27:24
3 Q. Is the book Clinical Oncology 10:27:28
4 authoritative? 10:27:30
5 A. The book? 10:27:30
6 Q. Yes, sir. By Abeloff. 10:27:32
7 A. Abeloff, yes. 10:27:32
8 Q. Is the book Medical Oncology - 10:27:40
9 Basic Principles and Clinical Management of 10:27:42
10 Cancer, by Calabresi -- 10:27:44
11 A. Calabresi, yes. 10:27:46
12 Q. Okay. That's authoritative? 10:27:48
13 A. Yes, it is. 10:27:48
14 Q. Is the American Journal of 10:27:50
15 Clinical Oncology authoritative? 10:27:54
16 A. Yes, it is. 10:27:54
17 Q. Is the publication Archives of 10:28:04
18 Otolaryngology - Head and Neck Surgery 10:28:06
19 authoritative? 10:28:08
20 A. Yes, it is. 10:28:08
21 Q. Is the publication Current 10:28:18
22 Opinions in Oncology authoritative? 10:28:22
23 A. Yes, it is. 10:28:24
24 Q. How about the British Journal of 10:28:28
25 Cancer? 10:28:28



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1 A. Yes, it is. 10:28:30
2 Q. Is the publication Cancer 10:28:54
3 Detection and Prevention authoritative? 10:28:56
4 A. Yes, it is. 10:28:58
5 Q. Is the publication Cancer of the 10:29:06
6 Head and Neck authoritative? 10:29:08
7 A. The multidisciplinary team? 10:29:12
8 Q. Um-hum. 10:29:14
9 A. Yes, it is. 10:29:14
10 Q. How about The Cancer Bulletin? 10:29:22
11 A. Yes, it is. 10:29:24
12 Q. Surgical Oncology, is that 10:29:30
13 authoritative? 10:29:32
14 A. The one by Copeland? 10:29:34
15 Q. I don't know the editor. You 10:29:36
16 have a -- I believe you have a chapter -- 10:29:40
17 A. Yeah, yeah. 10:29:40
18 Q. -- with Lindberg and Newman. 10:29:42
19 A. Yeah, on paranasal sinus cancer, 10:29:44
20 yes.
21 Q. That book is authoritative? 10:29:46
22 A. Yeah. 10:29:46
23 Q. Is the International Journal of 10:29:50
24 Cancer authoritative? 10:29:50
25 A. Yes. 10:29:52



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1 Q. Is the book The Retinoids: 10:30:04
2 Biology, Chemistry and Medicine, by Sporn, 10:30:06
3 Roberts, and Goodman -- 10:30:08
4 A. Yes, it is. 10:30:10
5 Q. -- authoritative? Yes? 10:30:12
6 A. Yes, it is. 10:30:14
7 Q. How about the publication 10:30:20
8 Seminars in Respiratory and Critical Care 10:30:22
9 Medicine? 10:30:24
10 A. Yes, it is. 10:30:24
11 Q. Current Problems in Cancer, by 10:30:30
12 Huber and Hong? 10:30:32
13 A. Huber and Hong, yes. 10:30:34
14 Q. Are you familiar with a book 10:30:40
15 called Modern Epidemiology, by Kenneth 10:30:44
16 Rothman? 10:30:44
17 A. No. 10:30:46
18 Q. Not your field, correct? 10:30:48
19 A. I don't know the book. 10:30:50
20 Q. Is The American Journal of 10:30:56
21 Surgery authoritative? 10:30:58
22 A. Yes, it is. 10:30:58
23 Q. Are you familiar with the 10:31:04
24 publication called Nature Medicine in 10:31:06
25 which -- 10:31:08



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1 A. Familiar, but I don't read it 10:31:10
2 much. 10:31:10
3 Q. Okay. I think Drs. Roth and 10:31:14
4 Hong have published in it. 10:31:16
5 A. Yeah. 10:31:16
6 Q. Is it authoritative? 10:31:18
7 A. Yes. 10:31:18
8 Q. How about the journal Head and 10:31:20
9 Neck?
10 A. Yes. 10:31:22
11 Q. That's authoritative? 10:31:24
12 A. I used to be the editor. 10:31:26
13 Q. Does that mean it's 10:31:28
14 authoritative? 10:31:28
15 A. Yes. 10:31:28
16 Q. The journal Archives of 10:31:36
17 Otolaryngology generally is authoritative? 10:31:40
18 A. You already asked me that 10:31:40
19 question. 10:31:40
20 Q. Well, I think I asked you about 10:31:42
21 a subjournal of that one. Is it 10:31:46
22 authoritative? 10:31:46
23 A. Yes, it is. 10:31:48
24 Q. Okay. 10:31:52
25 MR. ROWLEY: Let's go off the record 10:31:54



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1 for a second. 10:31:54

2 THE VIDEOGRAPHER: We're going off the 10:31:56

3 record at approximately 10:31 a.m. 10:31:58

4

5 (A recess was taken.)

6

7 (Ms. King was not present at the

8 continuation of the deposition.)

9

10 THE VIDEOGRAPHER: We're coming back on 10:42:22

11 the record approximately 10:42 a.m. 10:42:24

12 BY MR. ROWLEY: 10:42:24

13 Q. Doctor, did you recently testify 10:42:26

14 in a deposition or a trial in a case pending 10:42:30

15 in Harris County? 10:42:30

16 A. In Harris County? 10:42:38

17 Q. For a medical malpractice case? 10:42:40

18 A. Jesus, I don't remember. 10:42:42

19 Q. Do you remember a case called 10:42:44

20 Bloodworth versus Eugene Alfred, M.D.? 10:42:52

21 A. Oh, yeah. Yes, I do. 10:42:52

22 Q. Okay. When was that? 10:42:54

23 A. I don't remember. 10:42:56

24 Q. Within the last couple of years? 10:42:58

25 A. Yeah, it is within the last 10:42:58



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1 couple of years. 10:43:00
2 Q. Okay. Do you recall whether it 10:43:00
3 was -- it occurred since your deposition in 10:43:02
4 the Texas case? 10:43:04
5 A. I don't remember. What is the 10:43:06
6 date on that? 10:43:08
7 Q. Well, the cause number starts 10:43:10
8 with a 95, which, I presume, is the filing 10:43:12
9 date. 10:43:12
10 MR. STEED: That's correct. 10:43:14
11
12 (Ms. King entered the deposition
13 room.)
14
15 BY MR. ROWLEY: 10:43:18
16 Q. All right. So it would have 10:43:18
17 been sometime since 1995, but I don't when. 10:43:20
18 A. Yeah, I remember -- I don't -- I 10:43:20
19 don't know if it was -- I know the case was 10:43:22
20 eventually dismissed, but I don't know when 10:43:26
21 it was. 10:43:26
22 Q. Oh, in fact, I have an 10:43:28
23 indication here that the deposition was taken 10:43:32
24 in approximately July of '96. 10:43:34
25 Did you keep a copy of the 10:43:42



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1 transcript of your Texas deposition? 10:43:42
2 A. No. 10:43:44
3 Q. Did you review and sign it? 10:43:48
4 A. I don't remember. 10:43:48
5 Q. Okay. Do you ever recall 10:43:50
6 looking at it after it was transcribed? 10:43:54
7 A. I don't remember. 10:43:54
8 Q. Have you received any other 10:43:56
9 deposition transcripts from the plaintiffs' 10:43:58
10 lawyers? 10:43:58
11 A. No, I haven't. 10:44:00
12 Q. How many meetings have you had 10:44:06
13 with the plaintiffs' lawyers for the Oklahoma 10:44:08
14 case specifically? 10:44:10
15 A. With the plaintiff lawyers with 10:44:12
16 the Oklahoma case? 10:44:14
17 Q. Um-hum. 10:44:16
18 A. One. 10:44:16
19 Q. One. And that was the meeting 10:44:16
20 that you described before? 10:44:18
21 A. Two days ago. 10:44:20
22 Q. Okay. Where you did some edits 10:44:22
23 on the summary of your opinions? 10:44:24
24 A. Correct. 10:44:24
25 Q. What else was discussed at the 10:44:26



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1 meeting? 10:44:26
2 A. My behavior. 10:44:28
3 Q. And what about your behavior was 10:44:32
4 discussed? 10:44:32
5 A. To stay calm, cool, and 10:44:34
6 collected and answer. 10:44:36
7 Q. Okay. Did they tell you they 10:44:42
8 had a reason to believe that you wouldn't do 10:44:44
9 that, or did you think that was just a -- 10:44:46
10 A. No, it was just a -- They 10:44:46
11 needed to make sure that I did appropriately 10:44:48
12 and that I knew what was going on. 10:44:50
13 Q. Okay. What specifically did 10:44:50
14 they tell you? 10:44:52
15 A. I mean, that it was -- you were 10:44:56
16 going to question me; that I should wait 10:45:00
17 until you finish your question; that if I 10:45:02
18 didn't understand the question, to please 10:45:04
19 repeat it; and to stick with the book. 10:45:06
20 Q. Okay. What do you mean by "the 10:45:10
21 book"? 10:45:10
22 A. Well, I mean, like the last -- 10:45:12
23 last case, last time. 10:45:12
24 Q. Okay. Did they describe the 10:45:14
25 Oklahoma lawsuit in any way? 10:45:16



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1 A. No, they didn't. 10:45:18
2 Q. Did they tell you to what extent 10:45:22
3 the Oklahoma suit differs from the Texas 10:45:24
4 suit? 10:45:24
5 A. No, they didn't. 10:45:24
6 Q. You haven't met with any 10:45:30
7 Oklahoma lawyers, to your knowledge? 10:45:32
8 A. I treat an Oklahoma lawyer, but 10:45:34
9 nothing to do with this case, no. 10:45:36
10 Q. Okay. What Oklahoma lawyer do 10:45:38
11 you treat? 10:45:40
12 A. It's one that works for the 10:45:42
13 Indian reservation or something like that. 10:45:44
14 Q. Okay. 10:45:46
15 A. But I treat him for cancer. But 10:45:46
16 it has nothing to do with this. 10:45:48
17 Q. Okay.
18 A. But I've never -- I've not 10:45:48
19 discussed with anybody anything about the 10:45:52
20 Oklahoma trial if that's what you want to 10:45:52
21 know. 10:45:52
22 Q. Okay. All right. Have you -- 10:46:00
23 Can you tell me whether you've treated 10:46:02
24 Oklahoma Medicaid recipients? 10:46:04
25 A. I wouldn't know. 10:46:06



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1 Q. Okay. 10:46:08
2 A. I wouldn't know because that 10:46:10
3 information I don't pay attention to. 10:46:12
4 Q. Okay. You typically don't pay 10:46:16
5 attention to the payment source? 10:46:18
6 A. No, I don't because that's -- it 10:46:20
7 is not part of what we do, no. We have a 10:46:24
8 different system here. So I cannot tell you. 10:46:26
9 Q. All right. 10:46:26
10 A. Aside -- in our case it's 10:46:32
11 irrelevant because it's an out-of-state 10:46:36
12 situation. 10:46:38
13 Q. Sure.
14 A. So I wouldn't know. 10:46:38
15 Q. Okay. How many lawyers did you 10:46:40
16 meet with two days ago? 10:46:40
17 THE WITNESS: You're both lawyers? 10:46:44
18 MR. STEED: (Nodded head.) 10:46:46
19 A. Two. 10:46:46
20 BY MR. ROWLEY:
21 Q. Okay. And who were they?
22 A. Chris and -- I forgot the other 10:46:48
23 guy's name.
24 MR. STEED: Kendall Montgomery and 10:46:52
25 Chris Steed. 10:46:52



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1 BY MR. ROWLEY: 10:46:54
2 Q. Okay. How long did the meeting 10:46:56
3 last? 10:46:56
4 A. I charged for an hour -- for an 10:46:58
5 hour. It lasted 25 minutes. 10:47:00
6 Q. Okay. How much did you charge? 10:47:02
7 A. I don't know. That goes by -- 10:47:04
8 Amy Yoda knows. Amy Yoda, our legal counsel, 10:47:08
9 knows. I don't know. 10:47:10
10 Q. Okay. What are you charging per 10:47:12
11 hour for this deposition? 10:47:14
12 A. The same what is the rate that 10:47:16
13 the institution told you. I don't know. 10:47:18
14 Q. Okay.
15 A. It's not -- doesn't go into my 10:47:20
16 pocket anyhow. 10:47:22
17 Q. Okay. What was the subject of 10:47:28
18 your testimony in the Bloodworth versus 10:47:32
19 Alfred case? 10:47:32
20 A. It had to do with an injury to a 10:47:42
21 nerve during a biopsy procedure. 10:47:46
22 Q. Did you give opinions in that 10:47:48
23 case? 10:47:48
24 A. Yes, I did. 10:47:50
25 Q. What opinions did you give? 10:47:52



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1 A. That the patient had been -- had 10:47:56
2 given informed consent and that the 10:48:02
3 complication that occurred had been explained 10:48:04
4 to the patient and matters related to medical 10:48:10
5 practice. 10:48:10
6 Q. Okay. Did you testify as to 10:48:12
7 whether the standard of medical care had been 10:48:16
8 adhered to? 10:48:16
9 A. Yes, I did. 10:48:18
10 Q. Okay. And your opinion was that 10:48:18
11 it had been? 10:48:20
12 A. It had been adhered to. 10:48:22
13 Q. And another way of saying that 10:48:24
14 is that you believe that the complication was 10:48:26
15 not caused by any malfeasance or misfeasance 10:48:30
16 on the part of the physician? 10:48:32
17 A. That is correct. 10:48:34
18 Q. Did you review patient-specific 10:48:36
19 records in that case? 10:48:36
20 A. Yes, I did. 10:48:38
21 Q. You relied on patient-specific 10:48:40
22 records? 10:48:40
23 A. Correct. 10:48:40
24 Q. You could not have formulated 10:48:42
25 your opinions without seeing patient-specific 10:48:44



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1 information? 10:48:44
2 A. That is correct. 10:48:44
3 Q. We talked earlier about the 10:49:14
4 statement in your disclosure about the extent 10:49:22
5 to which cancers associated with smoking are 10:49:30
6 preventable, and you said that that relates 10:49:32
7 to the number of cancers. Do you recall 10:49:34
8 that? 10:49:34
9 A. Yes. 10:49:36
10 Q. Okay. Did you perform some type 10:49:44
11 of scientific calculation or other scientific 10:49:48
12 analysis to arrive at that opinion? 10:49:52
13 A. Scientific calculation? Which 10:49:54
14 way you mean? 10:49:56
15 Q. Well, how did you arrive at that 10:49:58
16 opinion? 10:49:58
17 A. By reading the existing 10:50:00
18 literature. 10:50:00
19 Q. Okay. As you sit here, do you 10:50:04
20 know how that computation was performed? 10:50:08
21 A. Not in detail. 10:50:12
22 Q. Okay. Are you an expert in the 10:50:18
23 various available means of performing such a 10:50:22
24 calculation? 10:50:22
25 A. No, I'm not. 10:50:24



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1 Q. You cannot describe the 10:50:26
2 equation, if any, by which that calculation 10:50:30
3 was performed? 10:50:30
4 A. Hell, no. 10:50:32
5 Q. You have not evaluated whether 10:50:38
6 the means by which that calculation was 10:50:40
7 performed is scientifically valid? 10:50:44
8 A. No, I haven't. 10:50:44
9 Q. And, therefore, you don't know 10:50:46
10 whether it's valid? 10:50:48
11 A. Correct. 10:50:48
12 Q. Okay. If the calculation was 10:50:58
13 performed based on something called a 10:51:00
14 population attributable risk formula, that's 10:51:06
15 something that's not within the scope of your 10:51:08
16 expertise? 10:51:08
17 A. It is beyond the scope of my 10:51:10
18 expertise. 10:51:12
19 Q. Okay. And to the extent that 10:51:14
20 there are references in the peer review and 10:51:18
21 scientific literature and, indeed, in Surgeon 10:51:22
22 General's reports to the effect that 10:51:24
23 population attributable risk calculations do 10:51:32
24 not establish or prove causation, that's not 10:51:34
25 something within the scope of your expertise? 10:51:34



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1 A. I would have no opinion on that. 10:51:36
2 Q. Okay. So you don't really know, 10:51:42
3 as you sit here, whether those estimates or 10:51:46
4 calculations really establish the number of 10:51:48
5 deaths or the amount of mortality or 10:51:52
6 morbidity attributable to smoking? That's 10:51:58
7 true? 10:51:58
8 A. Wait a minute. What are you 10:52:00
9 saying again? 10:52:00
10 Q. Yeah. Since you haven't 10:52:02
11 critiqued the methodology of the estimates -- 10:52:06
12 A. Yes. 10:52:06
13 Q. -- and you don't know whether 10:52:08
14 they're valid or invalid, you don't know 10:52:10
15 whether they're an accurate reflection of 10:52:12
16 preventable mortality or morbidity? 10:52:16
17 A. Correct. 10:52:16
18 Q. Okay. Just so I can avoid 10:52:32
19 asking you a whole litany of questions 10:52:34
20 regarding the Oklahoma Medicaid population, 10:52:38
21 do you agree that you know nothing about that 10:52:40
22 population? 10:52:40
23 A. I do not know anything about it. 10:52:42
24 Q. You know nothing about disease 10:52:44
25 incidence, risk factor prevalence, the mix or 10:52:48



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1 distribution of risk factors in that 10:52:52
2 population? 10:52:52
3 A. I don't know anything about it. 10:52:54
4 Q. Including relative risks or 10:52:56
5 attributable risks within the population? 10:52:58
6 A. In that population, I don't know 10:53:00
7 anything about it. 10:53:02
8 Q. Or expenditures? 10:53:02
9 A. Correct. 10:53:04
10 Q. The -- You agree that the 10:53:16
11 precise alterations in the cellular 10:53:20
12 metabolism that lead to head and neck cancers 10:53:24
13 are not understood? There are hypotheses, 10:53:32
14 but they are not proven? 10:53:32
15 A. Wait a minute. What are you 10:53:34
16 asking me now? 10:53:34
17 Q. Are you familiar with the phrase 10:53:38
18 "alterations in cellular metabolism"? 10:53:40
19 A. Alterations in cellular 10:53:42
20 metabolism, yes. 10:53:42
21 Q. Okay. Are the precise 10:53:44
22 alterations that lead to head and neck 10:53:48
23 cancers fully understood? 10:53:50
24 A. Fully understood? 10:53:50
25 Q. Yes. 10:53:52



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1 A. Probably not. 10:53:52
2 Q. Okay. There are a number of 10:53:58
3 competing hypotheses regarding what cellular 10:54:02
4 alterations must take place as a prerequisite 10:54:06
5 to the development of head and neck cancers? 10:54:10
6 A. That is correct. 10:54:10
7 Q. And a hypothesis is essentially 10:54:14
8 an unproven scientific proposition? 10:54:18
9 A. That is correct. 10:54:18
10 Q. And that's another way of saying 10:54:20
11 that the mechanism or mechanisms by which 10:54:26
12 head and neck cancer arise are not known? 10:54:28
13 A. Not fully known. 10:54:32
14 Q. Okay. Again, the state of 10:54:44
15 knowledge in that area is -- consists of 10:54:48
16 various competing hypotheses? 10:54:52
17 A. Correct. 10:54:52
18 Q. Now, I know you're not an expert 10:54:56
19 in biostatistics or epidemiology; but you 10:55:00
20 know from medical school and from 10:55:04
21 occasionally reading studies that there are 10:55:06
22 efforts to have a valid cohort selection in 10:55:12
23 studies. You know that generally? 10:55:14
24 A. Yes, I do. 10:55:14
25 Q. And you know that there are 10:55:18



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1 efforts to minimize the effects of biases in 10:55:22
2 the design of scientific studies? 10:55:24
3 A. That is correct. 10:55:24
4 Q. And there are efforts to control 10:55:26
5 for confounders, successful or not? 10:55:30
6 A. Correct. 10:55:32
7 Q. There are efforts to match cases 10:55:34
8 and controls because failure to match can 10:55:36
9 affect the validity of the conclusion of the 10:55:40
10 study? 10:55:42
11 A. That is correct. 10:55:42
12 Q. There are always statistical 10:55:44
13 tests that are employed to assess the 10:55:46
14 significance of any differences that are 10:55:50
15 found among cases and controls? 10:55:50
16 A. Yes, it is. 10:55:52
17 Q. These are all things that are 10:55:54
18 necessary to do to have a valid epidemiologic 10:55:58
19 or biostatistical study? Do you agree with 10:56:02
20 that? 10:56:02
21 A. Yes. 10:56:02
22 Q. Your opinions in this case are 10:56:08
23 based upon your patient population in your 10:56:14
24 clinical practice, your observation of 10:56:16
25 patients? 10:56:16



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1 A. Observation of patient and the 10:56:20
2 reading of the pertinent clinical literature. 10:56:22
3 Q. Okay. By "clinical literature," 10:56:24
4 that means, again, anecdotal observation from 10:56:28
5 the observation of patients? 10:56:28
6 A. And what is available in the 10:56:30
7 literature that I read on the subject. 10:56:32
8 Q. Okay. Clinical literature 10:56:34
9 relates to physicians observing patients? 10:56:38
10 That's what clinical literature is? 10:56:40
11 A. That's what clinical literature 10:56:42
12 is and what is written in the literature that 10:56:46
13 I am familiar with. 10:56:46
14 Q. Okay. The literature that 10:56:46
15 you're familiar with that is within the scope 10:56:50
16 of your expertise is clinical literature? 10:56:50
17 A. Correct. 10:56:52
18 Q. Do you have any data 10:56:56
19 compilations from your own clinical 10:57:00
20 practice? I know you have medical records 10:57:04
21 for each patient. 10:57:04
22 A. We have medical records. 10:57:06
23 Q. Have you compiled data with 10:57:08
24 respect to your own patients? 10:57:08
25 A. My own patients' compiled data? 10:57:14



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1 Q. Yeah. 10:57:16
2 A. I have way to retrieve those 10:57:18
3 patients, but I don't have it in a compiled 10:57:20
4 form right now. 10:57:22
5 Q. Let me give you an example. Do 10:57:24
6 you know the -- Have you computed the 10:57:26
7 average age of your patients over the years? 10:57:28
8 A. No. 10:57:28
9 Q. Do you know whether the average 10:57:30
10 age of your smoking patients differs from the 10:57:32
11 average age of your nonsmoking patients? 10:57:36
12 Have you computed that? 10:57:38
13 A. I haven't computed that way. 10:57:38
14 Q. You haven't in any 10:57:48
15 scientifically-valid way sought to assess 10:57:50
16 that? 10:57:50
17 A. No, I haven't. 10:57:52
18 Q. Okay. You don't have any data 10:57:52
19 or computations from your clinical practice 10:57:54
20 regarding the prevalence or distribution of 10:57:56
21 risk factors in the population? That's true? 10:58:00
22 A. No, I haven't. 10:58:00
23 Q. Okay. And you haven't compared 10:58:02
24 the prevalence or distribution or mix of risk 10:58:08
25 factors in your smoking patients with your 10:58:10



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1 nonsmoking patients in any scientifically 10:58:12
2 valid -- 10:58:12
3 A. I don't know if that has been 10:58:14
4 done by the epidemiologists in our group. 10:58:18
5 Q. Okay. To the extent that it has 10:58:20
6 been done, you're not familiar with -- 10:58:22
7 A. Not totally familiar with it. 10:58:24
8 Q. Okay. That's not something that 10:58:26
9 you have formally considered or otherwise 10:58:28
10 considered in formulating your opinions in 10:58:30
11 this case? 10:58:30
12 A. No. 10:58:32
13 Q. You have not considered, in 10:58:38
14 formulating your opinions, any compilation of 10:58:42
15 data regarding any variable that might affect 10:58:50
16 disease outcome from your clinical practice? 10:58:54
17 A. What do you mean? 10:58:54
18 Q. You haven't computed the 10:58:56
19 prevalence of any risk factor for any 10:58:58
20 subgroup in your patient population? 10:59:00
21 A. Computed the prevalence of any 10:59:00
22 subgroup? 10:59:10
23 Q. Any risk factor for any 10:59:12
24 subgroup. 10:59:12
25 A. Not -- What do you mean, 10:59:16



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1 really? What is the issue? 10:59:18
2 Q. Okay. Have you taken -- You 10:59:20
3 know how they do it in epidemiologic 10:59:22
4 studies. They look at the records. They 10:59:26
5 compile and stratify the data. 10:59:28
6 A. Uh-huh. 10:59:28
7 Q. They perform regression 10:59:30
8 analyses, test the significance of the 10:59:34
9 results through statistical methodologies. 10:59:36
10 A. Um-hum. 10:59:38
11 Q. You haven't done that with 10:59:38
12 respect to the entirety of your clinical 10:59:40
13 population? 10:59:40
14 A. Of my clinical population or our 10:59:44
15 clinical population? 10:59:44
16 Q. Yours. 10:59:46
17 A. Of my clinical population, no. 10:59:48
18 Q. Okay. 10:59:48
19 A. (Witness examined exhibit.)
20 Q. What are you looking for in your 10:59:54
21 CV? 10:59:56
22 A. I just -- I wanted to see a 10:59:56
23 paper by Spitz that addresses an issue of 11:00:00
24 epidemiology, but I can't find it right now. 11:00:04
25 Q. All right. To the extent that 11:00:04



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1 there has been any type of compilation or 11:00:08
2 scientifically-valid analysis of your patient 11:00:10
3 population, you don't rely on it in this 11:00:14
4 case? Is that true? 11:00:14
5 A. No, I don't. 11:00:16
6 Q. Okay. And in -- 11:00:20
7 A. Oh, here. I know what you're 11:00:22
8 talking about. Spitz is the one who wrote -- 11:00:26
9 I mean, the one I remember vividly is: 11:00:26
10 Cigarette smoking pattern in patient after 11:00:28
11 treatment of upper aerodigestive tract 11:00:30
12 cancer. 11:00:30
13 Q. Okay. What number is that in 11:00:32
14 your CV? 11:00:34
15 A. That's 135 on the CV. 11:00:36
16 Q. Okay. That's not something that 11:00:38
17 you rely on in giving your opinions in the 11:00:42
18 case; is that true? 11:00:46
19 A. I would say -- I cannot say 11:00:46
20 totally rely or not rely upon because it has 11:00:50
21 to do with the smoking pattern of patients 11:00:52
22 after treatment of upper aerodigestive tract 11:00:58
23 cancer. 11:01:00
24 Q. Okay. This paper relates to 11:01:04
25 people's smoking habits among your patient 11:01:06



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1 population after a certain type of treatment? 11:01:08
2 A. Correct. 11:01:10
3 Q. Okay. It does not purport to 11:01:12
4 estimate the extent of an association between 11:01:16
5 smoking and any disease or condition or the 11:01:22
6 strength of that association? 11:01:22
7 A. Correct. 11:01:22
8 Q. And it does not purport to 11:01:26
9 assess the issue of causation? 11:01:28
10 A. No, it doesn't. 11:01:28
11 Q. You would agree that your 11:01:34
12 patient population is -- results, to some 11:01:42
13 extent, from referrals from other physicians? 11:01:48
14 A. To a great extent, correct. 11:01:50
15 Q. All right. Your patient 11:01:52
16 population is, in a way, selected based on 11:01:56
17 their symptomatology? 11:02:00
18 A. The head and neck cancer 11:02:00
19 patients. 11:02:02
20 Q. Right. These are primarily, if 11:02:04
21 not exclusively, patients who have already 11:02:06
22 been diagnosed with head and neck cancer? 11:02:10
23 A. With tumors of the head and 11:02:12
24 neck, that is correct. 11:02:12
25 Q. And to that extent, your patient 11:02:14



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1 population is not characteristic or 11:02:16
2 representative of a general population? 11:02:18
3 A. To the extent that it's head and 11:02:20
4 neck cancer patients, yes, it is not a 11:02:24
5 presentative [sic] of the general population. 11:02:26
6 Q. Okay. It may not be 11:02:28
7 representative in terms of the patient's 11:02:30
8 general health? That's true? You haven't 11:02:34
9 performed any analysis of your patient 11:02:36
10 population in order to assess the extent of 11:02:42
11 similarity, comparability, or 11:02:46
12 representativeness of your patient population 11:02:48
13 with any other population, have you? 11:02:50
14 A. In which way? 11:03:02
15 Q. Well, in any way. You don't 11:03:04
16 have a compilation of data from your patient 11:03:06
17 population, say, for example, with respect to 11:03:08
18 the prevalence of any risk factor? 11:03:10
19 A. Prevalence of risk factors? 11:03:14
20 Q. So you haven't compared the 11:03:16
21 prevalence of a particular risk factor in 11:03:20
22 your patient population with the 11:03:20
23 prevalence -- 11:03:22
24 A. In all, no, we haven't. 11:03:24
25 Q. Okay. With respect to any 11:03:26



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1 variable that can affect disease outcome, you 11:03:28
2 have not compared your patient population 11:03:30
3 with any other population in any scientific 11:03:34
4 way? 11:03:34
5 A. Would you define that? 11:03:42
6 Q. Sure. Have you calculated the 11:03:44
7 prevalence of inadequate Vitamin A intake in 11:03:52
8 your patient population? 11:03:52
9 A. I don't know if we have. 11:03:54
10 Q. All right. To your knowledge, 11:03:56
11 you haven't? You don't recall that having 11:04:00
12 been done? 11:04:00
13 A. I don't remember if it was done 11:04:02
14 in one of the studies. I don't remember 11:04:06
15 that. 11:04:06
16 Q. Okay. You haven't taken that 11:04:08
17 into account in formulating your opinions 11:04:10
18 because you don't remember, right? 11:04:12
19 A. Vitamin A, I don't remember. 11:04:20
20 Q. All right. You haven't compared 11:04:24
21 the prevalence of Vitamin A deficiency or 11:04:28
22 inadequate -- 11:04:28
23 A. No.
24 Q. -- intake in your -- 11:04:30
25 A. No.



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1 Q. -- population -- 11:04:30
2 A. I have not. I have not. 11:04:32
3 Q. All right. You have not 11:04:34
4 compared smoking prevalence in your patient 11:04:36
5 population with smoking prevalence in other 11:04:40
6 populations in any scientific or empirical 11:04:44
7 way? 11:04:44
8 A. No. 11:04:46
9 Q. All right. You haven't done 11:04:46
10 that in any scientific or empirical way with 11:04:48
11 respect to any risk factor that you can 11:04:50
12 recall as you sit here, right? 11:04:52
13 A. No. 11:04:52
14 Q. You have not? 11:04:54
15 A. No, I have not. 11:04:54
16 Q. Okay. And you haven't taken any 11:04:56
17 such comparisons or assessments of 11:05:00
18 comparability or external validity into 11:05:04
19 account in formulating your opinions? 11:05:06
20 A. No, I haven't. 11:05:08
21 Q. Okay.
22 MR. ROWLEY: We only have a few minutes 11:05:08
23 left on the tape, so let's go off the record 11:05:10
24 and change it. 11:05:12
25 THE VIDEOGRAPHER: This is the end of 11:05:12



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1 Tape No. 1. We'll proceed on Tape No. 2. 11:05:16
2 The time is approximately 11:05 a.m. 11:05:20
3
4 (A recess was taken.)
5
6 **VIDEOTAPE NO. 2 BEGINS HERE:**
7
8 THE VIDEOGRAPHER: This is the 11:07:36
9 beginning of Tape No. 2. The time is 11:07:38
10 approximately 11:07 a.m. 11:07:40
11 BY MR. ROWLEY: 11:07:42
12 Q. Doctor, you haven't sought to 11:07:42
13 compare the prevalence, mix, and distribution 11:07:44
14 of risk factors for any disease in your 11:07:48
15 patient population with the prevalence, mix, 11:07:50
16 and distribution of risk factors in the 11:07:54
17 Oklahoma Medicaid population, have you? 11:07:56
18 A. No, I haven't. 11:07:56
19 Q. You haven't sought to ascertain 11:07:58
20 or compare the prevalence, mix, and 11:08:02
21 distribution of risk factors in the clinical 11:08:06
22 literature -- clinical practice literature 11:08:10
23 that you referred to with the prevalence, 11:08:12
24 mix, and distribution of risk factors in the 11:08:14
25 Oklahoma Medicaid population? 11:08:16



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1 A. No, I haven't. 11:08:16
2 Q. To the extent that your opinions 11:08:22
3 are based on your own clinical practice, the 11:08:24
4 opinions that are in your disclosure, you 11:08:26
5 haven't taken into account, in any 11:08:28
6 scientifically-valid way, confounders? You 11:08:34
7 haven't controlled for confounders? That's 11:08:38
8 true? 11:08:38
9 A. What are you asking? 11:08:40
10 Q. Sure. Do you know what it means 11:08:42
11 to control for confounders -- 11:08:44
12 A. Yes, I do. 11:08:44
13 Q. You have not done that with 11:08:46
14 respect to the opinions in your disclosure to 11:08:48
15 the extent that you rely on your clinical 11:08:48
16 practice? 11:08:52
17 A. No, I haven't. 11:08:52
18 Q. You have not assessed the effect 11:08:56
19 of the various biases that can attend a 11:09:02
20 scientific inquiry in formulating your 11:09:04
21 opinions? 11:09:04
22 A. That's correct. 11:09:06
23 Q. You made no attempt to formerly 11:09:12
24 match cases and controls in any sense in your 11:09:16
25 own clinical practice in formulating your 11:09:20



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1 opinions for this case? That's true? 11:09:22
2 A. That's correct. 11:09:24
3 Q. And we know with respect to the 11:09:28
4 issue of cohort selection that your patient 11:09:30
5 population is different from a more general 11:09:36
6 population; that is to say a population that 11:09:40
7 is not selected on the basis of head and neck 11:09:42
8 tumors? That's true? 11:09:46
9 A. Correct. 11:09:46
10 Q. And to that extent, it's not 11:09:48
11 representative or characteristic of other 11:09:52
12 more general populations? 11:09:54
13 A. That is correct. 11:09:54
14 Q. And you would agree that the 11:09:56
15 Oklahoma Medicaid population is not a 11:09:56
16 population that is selected on the basis of 11:09:58
17 diagnosed head and neck tumors? 11:10:02
18 A. That is correct. 11:10:04
19 Q. And you don't know to what 11:10:10
20 extent the Oklahoma Medicaid population 11:10:14
21 differs either from your own clinical 11:10:18
22 practice population or from the clinical 11:10:20
23 literature populations in important respects 11:10:24
24 that relate to disease outcome? That's true? 11:10:28
25 A. I agree. 11:10:28



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1 Q. You don't rely specifically on 11:10:54
2 and you do not intend to mention at trial 11:10:58
3 something called the Auerbach study; is that 11:11:00
4 true? 11:11:00
5 A. Auerbach? 11:11:02
6 Q. Yeah.
7 A. A-u-a -- A-u-e-r-b-a-c-h? 11:11:06
8 Q. A-u-e-r-b-a-c-h. 11:11:10
9 A. Auerbach. 11:11:12
10 Q. Right.
11 A. No.
12 MR. STEED: The one that coached the 11:11:14
13 Celtics. 11:11:18
14 BY MR. ROWLEY:
15 Q. Okay. The journal Laryngoscope 11:11:24
16 is authoritative, of course? 11:11:26
17 A. Yes, it is. 11:11:26
18 Q. In a paper that you wrote 11:11:46
19 recently in the Archives of Otolaryngology - 11:11:50
20 Head and Neck Surgery, you said the 11:11:52
21 following -- And I'm going to ask you about 11:11:54
22 this. Let me quote it for you. 11:11:56
23 (Reading.) Reports from single 11:11:58
24 institutions addressing changing trends and 11:12:00
25 variability of presentations and patterns of 11:12:02



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1 care are likely to be biased by patterns of 11:12:06
2 referrals, the type of reporting institution, 11:12:10
3 open paren, such as primary versus tertiary 11:12:16
4 care centers, close paren, and individual 11:12:18
5 treatment preferences. 11:12:22
6 Do you recall that? 11:12:22
7 A. Yes, I do. 11:12:24
8 Q. And that was an accurate 11:12:26
9 statement as it was included in your 1997 11:12:32
10 journal article? 11:12:34
11 A. What is the title of the 11:12:36
12 article? 11:12:36
13 Q. Patterns of Care for Cancer of 11:12:38
14 the Larynx in the United States. Shaw, 11:12:44
15 Karnell, Hoffman, Brown, Fee, Glass, 11:12:48
16 Goepfert. 11:12:50
17 A. Yeah, this is a commission on 11:12:50
18 cancer manuscript, yes. 11:12:52
19 Q. Okay. The reason that reports 11:13:02
20 from single institutions -- one of the 11:13:06
21 reasons they may be biased is because of 11:13:10
22 patterns of referrals. That's what you 11:13:14
23 wrote? 11:13:14
24 A. Correct. 11:13:16
25 Q. That means that particular 11:13:18



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1 institutions may receive different types of 11:13:22
2 referrals because of their reputation for 11:13:24
3 expertise in particular types of cancer or 11:13:28
4 their preferences with respect to treatment 11:13:32
5 or for a variety of other reasons, right? 11:13:36
6 A. Correct. 11:13:36
7 Q. And your patterns of referrals 11:13:44
8 are unique to you? That's true? 11:13:46
9 A. The patterns of referral to this 11:13:48
10 institution are unique to us, correct. 11:13:50
11 Q. And they are not -- You would 11:13:54
12 expect that they would not be scientifically 11:13:56
13 representative or characteristic of 11:13:58
14 institutions in general because the patterns 11:14:02
15 of referral are unique? 11:14:04
16 A. Correct. 11:14:04
17 Q. And you mentioned, as another 11:14:12
18 source of bias of reporting from single 11:14:16
19 institutions, individual treatment 11:14:20
20 preferences? 11:14:20
21 A. Correct. 11:14:20
22 Q. That means that not only do 11:14:26
23 particular physicians have individual 11:14:28
24 treatment preferences, preferences may differ 11:14:32
25 from institution to institution? 11:14:34



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1 A. Correct. 11:14:36
2 Q. Different treatments have 11:14:42
3 associated with them different costs. Do you 11:14:46
4 agree with that? 11:14:46
5 A. Yes, sir. 11:14:48
6 Q. And, therefore, different 11:14:50
7 treatment preferences lead to different 11:14:52
8 costs? 11:14:52
9 A. Yes, sir. 11:14:54
10 Q. You have not studied in any way 11:14:56
11 treatment preferences that attend the 11:15:00
12 Oklahoma Medicaid population? 11:15:02
13 A. No, I haven't. 11:15:04
14 Q. You have no testimony that 11:15:06
15 relates in any way to treatment costs with 11:15:10
16 respect to the Oklahoma Medicaid population? 11:15:10
17 A. No, I don't. 11:15:12
18 Q. Or with respect to the 11:15:14
19 pre-Medicaid charity care population in 11:15:20
20 Oklahoma? 11:15:20
21 A. No, I don't. 11:15:22
22 Q. Or with respect to the 11:15:22
23 population of persons who are covered by 11:15:26
24 state-sponsored medical insurance in 11:15:28
25 Oklahoma? 11:15:28



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1 A. No, I don't. 11:15:30
2 Q. In the same article you wrote 11:15:42
3 that the vast majority -- This is not a 11:15:44
4 quote. This is a -- what I gather from 11:15:48
5 reading it. The vast majority of patients 11:15:52
6 with laryngeal cancer have a history of 11:15:54
7 drinking ten or more drinks per week. Do you 11:15:58
8 recall that? 11:15:58
9 A. Yes. 11:16:00
10 Q. Is that accurate? 11:16:00
11 A. To that extent, it is accurate. 11:16:04
12 Q. Okay. And the number is 11:16:08
13 something like 70 percent of laryngeal cancer 11:16:12
14 patients have a drinking history? 11:16:14
15 A. Correct. 11:16:14
16 Q. And alcohol, of course, is a 11:16:18
17 risk factor for laryngeal cancer? 11:16:20
18 A. It is, correct. 11:16:22
19 Q. And then you say: The 11:16:24
20 difficulty of obtaining an accurate history 11:16:26
21 of alcohol use is widely recognized. What 11:16:30
22 does that mean? 11:16:30
23 A. That is often denied. 11:16:32
24 Q. Why is that? 11:16:34
25 A. Because the way that it is 11:16:38



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1 inquired, people may not want to volunteer 11:16:42
2 for it. 11:16:44
3 Q. Why not? 11:16:44
4 A. Because they feel guilty about 11:16:48
5 it. How many drinks do you drink a week? 11:16:50
6 Q. All right. All right. You 11:17:04
7 agree that if it is difficult to obtain an 11:17:08
8 accurate history of alcohol use, to the 11:17:10
9 extent that alcohol intake is a confounder in 11:17:14
10 assessing the relationship between smoking 11:17:16
11 and disease, that's a serious problem? 11:17:18
12 A. It is a problem, yes. 11:17:18
13 Q. And to the extent that alcohol 11:17:22
14 intake is underreported, it's attribution as 11:17:32
15 a cause or a risk factor in various types of 11:17:36
16 cancer, including laryngeal cancer, is also 11:17:38
17 likely to be underreported? 11:17:40
18 A. Yes, it is difficult, correct. 11:17:54
19 You have to realize, by the way, that this is 11:17:56
20 a national study based on the National Cancer 11:18:00
21 Data Bank, NCDB. 11:18:04
22 Q. Okay. So these -- 11:18:04
23 A. So it's arm length from what you 11:18:06
24 would do specifically in the institution, you 11:18:10
25 see? If you're my patient, I look you 11:18:12



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1 straight in the face; and I ask you, "Do you 11:18:14
2 drink five or six drinks a week -- or five or 11:18:18
3 six drinks a day?" 11:18:18
4 And then you come down, "No, 11:18:22
5 it's only two." Okay. I know that's about 11:18:22
6 probably three, you see. I don't ask you how 11:18:26
7 many do you drink because you would say, 11:18:26
8 "One." 11:18:28
9 Q. Okay.
10 A. You see? It's the way that you
11 ask. So this is why I say this is arm length 11:18:30
12 away from anything. 11:18:32
13 Q. Sure. 11:18:32
14 A. Because it's the reporting as it 11:18:34
15 occurs through the so called cancer 11:18:36
16 registries. Okay. This is cancer registry 11:18:40
17 data. 11:18:40
18 Q. Okay. What is it about the 11:18:44
19 means of collection of data for a cancer 11:18:48
20 registry or for a study that makes it less 11:18:52
21 reliable than other means? 11:18:54
22 A. It's the way it's extracted from 11:19:00
23 the chart. You see these are data that are 11:19:04
24 gathered at the national level and basically, 11:19:08
25 unless you do this in a prospective fashion, 11:19:14



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1 it may not go into. If I specifically want 11:19:18
2 to do a study, I would have to specifically 11:19:20
3 ask that question. This may or may not get 11:19:24
4 into the record. 11:19:26
5 Q. Okay. 11:19:26
6 A. You see? So the underreporting 11:19:30
7 is very possible. 11:19:30
8 Q. Okay. So you're drawing a 11:19:32
9 distinction between retrospective and 11:19:36
10 prospective studies? 11:19:40
11 A. That is one flaw of it. 11:19:44
12 Q. Okay. And the flaw can arise 11:19:46
13 with respect to retrospective studies where 11:19:48
14 their reliance is on data or medical records 11:19:48
15 that were not compiled for the purpose of 11:19:50
16 conducting a study? 11:19:50
17 A. Correct, not specifically for 11:19:52
18 that item. 11:19:54
19 Q. Okay. And that's a flaw or a 11:19:56
20 problem that can arise anytime you use a set 11:20:02
21 of data that were not compiled for the 11:20:04
22 purpose for which you are using? 11:20:06
23 A. You are correct. 11:20:08
24 Q. Another example of that would be 11:20:16
25 use of ICD-9 codes which are intended for 11:20:20



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1 reimbursement purposes? 11:20:22
2 A. Correct. Yeah. 11:20:24
3 Q. They're not intended for 11:20:28
4 physicians to rely on them for purposes of 11:20:30
5 deciding whether to perform a surgical 11:20:36
6 procedure on a patient? 11:20:38
7 A. Correct. 11:20:38
8 Q. Or for assessing whether a 11:20:40
9 particular risk factor is a cause of a 11:20:42
10 disease? 11:20:42
11 A. You are correct. 11:20:44
12 Q. Or for -- Well, strike that. 11:20:48
13 You agree that with respect to 11:21:02
14 oral and pharyngeal cancers, diets poor in 11:21:08
15 vegetables and fruits play a complex role in 11:21:14
16 the development of those malignancies? 11:21:16
17 A. Correct. 11:21:16
18 Q. And you agree that low income 11:21:18
19 populations are less likely to have diets 11:21:22
20 that are high in vegetables and fruits? 11:21:24
21 A. By and large correct. 11:21:26
22 Q. By and large correct? 11:21:30
23 Are you familiar with studies 11:21:32
24 which have sought to ascertain why low 11:21:36
25 socioeconomic status populations have a 11:21:42



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1 higher incidence of tumors generally and head 11:21:48
2 and neck tumors specifically? 11:21:50
3 A. I have read the literature, but 11:21:54
4 what specifically you want to know about it? 11:21:56
5 Q. Well, are you familiar with 11:21:58
6 studies that have sought to ascertain whether 11:22:02
7 the difference between disease incidence 11:22:04
8 among low socioeconomic status persons and 11:22:10
9 those -- 11:22:12
10 A. -- of high socioeconomic 11:22:14
11 status -- 11:22:14
12 Q. -- is attributable solely to 11:22:16
13 income or education or to other factors? 11:22:20
14 A. Yes, I am -- I've read the 11:22:22
15 literature on that subject. 11:22:22
16 Q. Okay. And you know that there 11:22:24
17 are valid peer-reviewed scientific studies 11:22:28
18 that have taken into account behavioral 11:22:32
19 life-style choices such as smoking, high fat 11:22:36
20 diet, inactivity, and other -- 11:22:42
21 A. As risk factors for certain 11:22:44
22 disease, correct. 11:22:44
23 Q. And those studies have sought to 11:22:46
24 determine whether all of the difference 11:22:48
25 between low and high socioeconomic -- 11:22:52



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1 A. -- can be attributable to that 11:22:54
2 effect. 11:22:54
3 Q. That's right. 11:22:56
4 A. Correct. 11:22:56
5 Q. And they have found that the 11:22:58
6 difference between low and high socioeconomic 11:23:04
7 study of populations cannot be attributed 11:23:10
8 entirely to behavioral -- differences in 11:23:14
9 behavioral risk factor prevalence? 11:23:16
10 A. Not entirely, that's correct. 11:23:18
11 Q. Okay. In fact, the most recent 11:23:22
12 study found that only a small portion of the 11:23:32
13 difference could be attributable to 11:23:34
14 differences in health behaviors. 11:23:38
15 A. Correct. 11:23:40
16 Q. And so there are differences 11:23:46
17 between high and low income populations that 11:23:50
18 account for higher disease incidence in low 11:23:54
19 income populations other than smoking, 11:23:58
20 drinking, sedentary life-style, diet, and 11:24:02
21 other behavioral factors. You agree with 11:24:06
22 that? 11:24:06
23 A. Yes, they are. 11:24:06
24 Q. And, in fact, the majority of 11:24:10
25 the difference in disease outcome between 11:24:12



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1 those two types of populations is 11:24:14
2 attributable to factors other than the 11:24:18
3 behavioral aspects? 11:24:20
4 A. I don't know if that's so 11:24:20
5 strongly stated. I don't know if you can 11:24:26
6 state it that strongly. That there are other 11:24:30
7 factors, yes; but I don't know that you can 11:24:32
8 state it that strongly. I mean, it is a 11:24:34
9 compare -- There are a lot of confounding 11:24:38
10 features, if you compare them: high 11:24:42
11 socioeconomic, low socioeconomic, urban, 11:24:46
12 rural, habits. I mean, it's complicated and 11:24:54
13 sort of depends on what size of the 11:24:56
14 population do you look at. 11:24:58
15 Q. Okay. So there are a lot of 11:25:02
16 differences between low and high 11:25:06
17 socioeconomic groups? 11:25:06
18 A. Yes, there are differences and 11:25:08
19 there are -- but you cannot really say 11:25:10
20 that -- to my knowledge -- and I'm not an 11:25:14
21 expert on the field -- to my knowledge, you 11:25:18
22 cannot really clearly define which one is 11:25:22
23 more important. 11:25:22
24 Q. Okay. There are differences, 11:25:26
25 for example, in occupational exposures 11:25:28



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1 between --

2 A. Yes, there are. 11:25:30

3 Q. -- between high and low income 11:25:32

4 folks? 11:25:32

5 A. There are. 11:25:32

6 Q. There are differences in 11:25:34

7 environmental exposures? 11:25:34

8 A. There are. 11:25:36

9 Q. There are differences in access 11:25:36

10 to preventative care? 11:25:38

11 A. Yes, there are. 11:25:40

12 Q. There are differences in access 11:25:42

13 to therapeutic care? 11:25:44

14 A. Oh, yes, there are. 11:25:46

15 Q. There are differences in the use 11:25:46

16 of preventative and therapeutic care? 11:25:50

17 A. Yes, there are. 11:25:50

18 Q. And there are references in the 11:25:54

19 peer review literature to socioeconomic 11:25:56

20 stratification itself being a cause of high 11:26:00

21 disease incidence in low socioeconomic status 11:26:04

22 populations. Do you agree with that? 11:26:06

23 A. That is correct. 11:26:08

24 Q. Lack of social relationships may 11:26:10

25 be a causal factor? 11:26:12



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1 A. The literature says that, yes. 11:26:14
2 Q. Lack of social supports may be a 11:26:18
3 cause? 11:26:18
4 A. Yes. A causative -- 11:26:22
5 Q. Yes. 11:26:24
6 A. -- morbidity factor? 11:26:24
7 Q. Yes. 11:26:26
8 A. Yes. 11:26:26
9 Q. Personality dispositions, 11:26:28
10 chronic and acute stress? 11:26:32
11 A. Yes, it is. 11:26:34
12 Q. All right. And so it's an 11:26:34
13 extremely complex, interwoven web of causes 11:26:40
14 and risk factors? 11:26:40
15 A. Correct. 11:26:42
16 Q. And it is difficult, if not 11:26:44
17 impossible, to separate out for any 11:26:48
18 population which disease or set of diseases 11:26:52
19 has been caused by or has resulted from any 11:26:56
20 particular risk factor because it's such a 11:27:00
21 complex, interwoven web, correct? 11:27:04
22 A. Exclusively by one, no. 11:27:06
23 Q. Okay. And in thinking about 11:27:14
24 your clinical patient population and the 11:27:18
25 clinical practice literature, you didn't take 11:27:24



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1 into account in any formal scientific or any 11:27:28
2 other sense the prevalence of occupational 11:27:32
3 hazards among smokers versus nonsmokers? 11:27:36
4 A. Occupational hazards of smokers 11:27:40
5 versus nonsmokers? In which way do you mean 11:27:44
6 that? 11:27:44
7 Q. Okay. When you considered your 11:27:46
8 clinical population and the clinical 11:27:50
9 populations in the clinical practice 11:27:52
10 literature, you didn't formally or 11:27:54
11 scientifically assess the prevalence of 11:27:58
12 occupational hazards among smokers versus the 11:28:02
13 prevalence of occupational hazards? 11:28:02
14 A. Oh, if I were to do an 11:28:04
15 epidemiological study, you say, or in the 11:28:06
16 clinical practice, day by day? 11:28:06
17 Q. For this case, in formulating 11:28:08
18 your opinions in this case, you did not 11:28:10
19 form -- 11:28:12
20 A. Do -- 11:28:14
21 Q. -- you did not take into account 11:28:14
22 differences in occupational hazards or 11:28:16
23 exposures among smokers and nonsmokers in 11:28:20
24 your clinic -- 11:28:20
25 A. No, huh-uh. 11:28:22



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1 Q. -- in your clinical practice? 11:28:22
2 A. No. 11:28:22
3 Q. Or in the clinical practice 11:28:24
4 literature? 11:28:26
5 A. No. 11:28:26
6 Q. And you didn't do that for 11:28:26
7 environmental hazards, correct? 11:28:28
8 A. I mean, there are confounding 11:28:34
9 environmental hazards. 11:28:34
10 Q. Yes, there are. 11:28:36
11 A. Like, for example, asbestos plus 11:28:38
12 smoking. 11:28:38
13 Q. Yeah. Or radon -- 11:28:40
14 A. Drinking plus smoking. Radon 11:28:44
15 plus smoking. 11:28:44
16 Q. Or radon exposure? 11:28:46
17 A. Yeah. 11:28:48
18 Q. What I'm asking you is: You did 11:28:48
19 not in any scientific way compare the 11:28:52
20 prevalence of, for example, radon exposure in 11:28:54
21 your clinical practice population among 11:28:58
22 smokers versus the prevalence of radon in 11:29:00
23 nonsmokers?
24 A. No, I didn't. 11:29:02
25 Q. Okay. And you didn't do that 11:29:02



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1 for the clinical practice literature? 11:29:04
2 A. No, I didn't. 11:29:06
3 Q. And you didn't do that with 11:29:08
4 respect to the issue of access to 11:29:10
5 preventative care, did you? 11:29:14
6 A. No, I didn't. 11:29:14
7 Q. Or with respect to the issue of 11:29:16
8 access to therapeutic care? 11:29:18
9 A. No, I didn't. 11:29:20
10 Q. Or with respect to the issue of 11:29:22
11 socioeconomic stratification itself? 11:29:24
12 A. No, I don't. 11:29:24
13 Q. Or with respect to lack of 11:29:28
14 social relationships? 11:29:28
15 A. No, I don't. 11:29:30
16 Q. Or lack of social supports? 11:29:30
17 A. No, I don't. 11:29:32
18 Q. Or personality dispositions? 11:29:34
19 A. No, I don't. 11:29:34
20 Q. Or important issues such as 11:29:36
21 chronic and acute stress? 11:29:38
22 A. No, I didn't. 11:29:40
23 Q. And you certainly haven't taken 11:29:40
24 any of those factors into account with 11:29:42
25 respect to the Oklahoma Medicaid population 11:29:44



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1 or any other Oklahoma population -- 11:29:46
2 A. No, I didn't. 11:29:48
3 Q. -- because you know literally 11:29:50
4 zero about those populations? 11:29:52
5 A. I don't know anything about the 11:29:54
6 population. 11:29:54
7 Q. Okay. All right. Do you intend 11:30:08
8 to rely upon any photographs when you testify 11:30:14
9 at trial? 11:30:14
10 A. Photographs of what? 11:30:18
11 Q. Photographs of anything. It's 11:30:20
12 just a general question that I ask. 11:30:24
13 Let me put it this way: Did you 11:30:28
14 bring any photographs with you today to 11:30:30
15 disclose to me? 11:30:30
16 A. No, but I should have. 11:30:34
17 Q. Okay. All right. You did not 11:30:38
18 bring any photos? 11:30:38
19 A. No, I didn't. 11:30:40
20 Q. Okay. As you sit here, you have 11:30:42
21 not been asked to show the jury -- 11:30:42
22 A. I have not been asked, no. 11:30:44
23 Q. Okay. And as you sit here, you 11:30:46
24 don't intend to show the jury any 11:30:48
25 photographs? 11:30:50



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1 A. Unless I'm asked, I don't intend 11:30:52
2 to. 11:30:52
3 Q. Okay. But you haven't been 11:30:54
4 asked -- 11:30:54
5 A. No. 11:30:54
6 Q. -- to this point, and you don't 11:30:56
7 intend to? 11:30:58
8 A. No, I have not been asked to. 11:31:00
9 Q. Okay. And you do occasionally 11:31:20
10 show photographs to your patients of surgical 11:31:24
11 procedures and tumors and so forth? 11:31:28
12 A. Yes, I do. 11:31:28
13 Q. And I know you don't intend to 11:31:30
14 show those to the jury. But the reason that 11:31:32
15 you show them to your patients is in hopes 11:31:36
16 that they'll be sufficiently alarmed or 11:31:40
17 repulsed by the photographs that it might 11:31:42
18 change their risk behavior? You want them 11:31:44
19 to --
20 A. That's one of the -- I actually 11:31:48
21 do that for kids. 11:31:48
22 Q. Okay. You want them to be -- 11:31:50
23 A. Or the family of the patient. 11:31:54
24 When I show photographs of the patient is to 11:31:56
25 tell him what we can do to rehabilitate the 11:31:58



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1 patient, basically. 11:32:00
2 Q. Right. 11:32:00
3 A. So the context of when I use 11:32:02
4 photographs is different. 11:32:04
5 Q. Okay. But the photographs that 11:32:04
6 you show, one of the reasons that you show 11:32:08
7 them is to kind of shock the patient into -- 11:32:10
8 A. Educate the patient. Let's put 11:32:14
9 it this way. 11:32:16
10 Q. Okay. You want them to change 11:32:16
11 their behavior? 11:32:16
12 A. Yes, correct. 11:32:18
13 Q. Okay. And you want to show them 11:32:20
14 something that is dramatic? 11:32:22
15 A. Correct. 11:32:22
16 Q. Okay. And some of these 11:32:22
17 photographs -- or the photographs that you 11:32:24
18 show them are alarming? 11:32:32
19 A. Gory. 11:32:34
20 Q. Gory. Okay. Put it this way: 11:32:36
21 You want to evoke an emotional response. 11:32:38
22 A. Correct. 11:32:40
23 Q. Okay.
24 A. That's all of what trial is 11:32:42
25 about. 11:32:42



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1 Q. Okay. None of the photographs 11:32:44
2 that you show your patients are of Oklahoma 11:32:50
3 Medicaid recipients? 11:32:50
4 A. I don't think so. 11:32:54
5 Q. Okay. The last time I asked you 11:33:20
6 about something called the Frank Statement. 11:33:22
7 A. Would you repeat it? 11:33:26
8 Q. Did you ever find out who or 11:33:28
9 what the Frank Statement is? 11:33:30
10 A. No. 11:33:30
11 Q. Okay. Never heard of it? 11:33:32
12 A. I should have if you said you 11:33:36
13 asked me, but I don't remember. 11:33:38
14 Q. Okay. Aside from me asking you 11:33:40
15 about it in the last deposition, you don't 11:33:42
16 recall ever having heard about the Frank 11:33:44
17 Statement?
18 A. No, I don't -- I don't -- I 11:33:44
19 don't remember anything. 11:33:44
20 Q. You don't know whether that's a 11:33:46
21 person or a thing? Never heard of it? 11:33:48
22 A. Unless it's Anna Frank, I don't 11:33:52
23 know who it is. 11:33:54
24 Q. Okay. All right. You still 11:33:56
25 don't know who Freddie Homburger (phonetic) 11:34:02



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1 is? 11:34:02
2 A. No. 11:34:02
3 Q. You still don't know who the 11:34:04
4 Loichtenbergers (phonetic) are? 11:34:08
5 A. Loichtenbergers? 11:34:08
6 Q. Loichtenbergers.
7 A. Lichtenbergers (phonetic)?
8 Q. Lichtenberger.
9 A. No, I don't. 11:34:12
10 Q. Okay. In your professional 11:34:16
11 career you have never relied upon or changed 11:34:20
12 your conduct by reason of something called 11:34:22
13 the Frank Statement, have you? 11:34:24
14 A. I wouldn't know. 11:34:26
15 Q. Okay. To your knowledge, you 11:34:30
16 never have, right? 11:34:32
17 A. Not with that name. 11:34:32
18 Q. Okay. And you still don't know 11:34:42
19 whether lifetime medical expenditures for 11:34:46
20 smokers versus nonsmokers are higher or 11:34:48
21 lower? Let me rephrase that. That was an 11:34:54
22 awful question. 11:34:54
23 A. I agree. 11:34:56
24 Q. Yeah. 11:34:56
25 MR. STEED: That it was an awful 11:34:58



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1 question; not to the question before. 11:35:02
2 BY MR. ROWLEY: 11:35:04
3 Q. It was truly an awful question. 11:35:06
4 A. Okay. What do you mean now? 11:35:08
5 Q. Yeah. You don't know whether 11:35:10
6 smokers have higher or lower lifetime medical 11:35:14
7 expenditures than nonsmokers? You've never 11:35:16
8 studied --
9 A. That is not my area of 11:35:18
10 expertise. I don't know. 11:35:20
11 Q. You've never studied that? 11:35:22
12 A. No, I haven't. 11:35:24
13 MR. ROWLEY: Okay. Let's go off the 11:35:42
14 record for a minute. 11:35:44
15 THE VIDEOGRAPHER: We're going off the 11:35:46
16 record at approximately 11:35 a.m. 11:35:48
17
18 (A recess was taken.)
19
20 THE VIDEOGRAPHER: We're coming back on 11:40:20
21 the record approximately 11:40 a.m. 11:40:22
22 BY MR. ROWLEY: 11:40:24
23 Q. Doctor, you have no information 11:40:28
24 or testimony that would be relevant to or 11:40:34
25 could be used as a basis of computing 11:40:40



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1 expenditures in the Oklahoma Medicaid 11:40:42
2 population, do you? 11:40:42
3 A. No, I don't. 11:40:44
4 Q. Or in the pre-Medicaid charity 11:40:48
5 care population in Oklahoma? 11:40:50
6 A. No, I don't. 11:40:50
7 Q. Or in the population of persons 11:40:52
8 who are covered by state-sponsored medical 11:40:56
9 insurance? 11:40:56
10 A. No, I don't. 11:40:56
11 Q. You have no opinions or 11:41:00
12 information that would be relevant to or that 11:41:04
13 could be used to reconstruct treatment 11:41:08
14 protocols that were actually rendered to the 11:41:12
15 Oklahoma Medicaid recipients whose 11:41:14
16 expenditures are the subject of this lawsuit? 11:41:16
17 A. No, I don't. 11:41:18
18 Q. Or with respect to the 11:41:20
19 pre-Medicaid Oklahoma charity care 11:41:22
20 population? 11:41:24
21 A. No, I don't. 11:41:26
22 Q. Or with respect to the 11:41:28
23 population of persons who are covered by 11:41:30
24 state-sponsored medical insurance? 11:41:32
25 A. No, I don't. What is it called 11:41:36



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1 in Oklahoma? The pre-Medicaid charity 11:41:38
2 population? Is that Medicaid? Just for my 11:41:42
3 information. 11:41:42
4 Q. Yeah. As I understand it -- and 11:41:46
5 this may be accurate or not -- 11:41:48
6 A. I just -- The nomenclature 11:41:50
7 strikes me as strange. 11:41:54
8 Q. Yeah. I believe that there is a 11:41:56
9 claim for --
10 A. Oh.
11 Q. -- for charity care 11:41:56
12 expenditures --
13 A. Just for my info. 11:41:58
14 Q. -- that predated -- 11:42:00
15 A. Okay.
16 Q. -- Medicaid. 11:42:00
17 All right. Opinion No. 10 in 11:42:20
18 your disclosure says that you may testify or 11:42:24
19 comment on the opinions offered by 11:42:28
20 defendants' experts. Have you seen any 11:42:30
21 opinions offered by defendants' experts? 11:42:32
22 A. No, I haven't seen any. 11:42:34
23 Q. Did you see any in the Texas 11:42:36
24 case? 11:42:36
25 A. None written. No, I didn't. 11:42:42



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1 Q. Okay. You say, "None written." 11:42:44
2 Did you -- did you hear of any? Did you 11:42:50
3 receive information regarding them? 11:42:52
4 A. I mean, an opinion offered by 11:43:06
5 the defendants' expert, no. You were the 11:43:10
6 defendants, the tobacco company. No. No, I 11:43:12
7 didn't. 11:43:12
8 Q. Okay. I take it that you have 11:43:14
9 no opinions or comments regarding the 11:43:20
10 opinions offered by defendants' experts. 11:43:22
11 A. No, I don't. 11:43:24
12 Q. A multifactorial disease is a 11:43:28
13 disease or condition that has been 11:43:28
14 statistically associated with more than one 11:43:32
15 risk factor; is that accurate? 11:43:34
16 A. Yes, it is. 11:43:34
17 Q. And a risk factor is a 11:43:42
18 characteristic or an exposure that has been 11:43:46
19 statistically associated with a disease or 11:43:50
20 condition? 11:43:50
21 A. Let's see your choice of wording 11:43:58
22 again. 11:43:58
23 Q. Sure. A risk factor is a 11:44:00
24 characteristic, an attribute, or an exposure 11:44:06
25 that has been statistically associated with a 11:44:10



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1 disease or a condition. 11:44:10
2 A. I agree with that. 11:44:12
3 Q. Do you know of anyone who would 11:44:16
4 disagree with those definitions? 11:44:18
5 A. I don't know. Probably, yes. 11:44:20
6 But I wouldn't know. 11:44:22
7 Q. All of the diseases and 11:44:24
8 conditions that are listed in your disclosure 11:44:28
9 are multifactorial? 11:44:30
10 A. Yeah. 11:44:30
11 Q. Do you know of anyone who would 11:44:32
12 disagree with that? 11:44:34
13 A. I don't. 11:44:34
14 Q. Never heard of anybody say that 11:44:36
15 they're not? 11:44:38
16 A. Hum-um. I don't. 11:44:38
17 Q. You haven't? 11:44:40
18 A. I haven't heard of anybody. 11:44:40
19 Q. Okay. Esophageal cancer, 11:44:46
20 laryngeal cancer, pharyngeal cancer, and oral 11:44:50
21 or mouth cancer are all multifactorial? 11:44:52
22 A. Yes, they are. 11:44:54
23 Q. Do you treat many patients who 11:45:14
24 are in nursing homes? 11:45:16
25 A. In nursing homes? 11:45:18



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1 Q. Yes. 11:45:18
2 A. Not many. 11:45:20
3 Q. Okay. Would I be correct to say 11:45:22
4 that very few of your patients end up in 11:45:26
5 nursing homes? 11:45:26
6 A. End up in nursing homes or come 11:45:30
7 from nursing homes? It's two different 11:45:30
8 questions.
9 Q. Well, very few come from nursing 11:45:34
10 homes. 11:45:34
11 A. Yeah. 11:45:34
12 Q. Very few are in nursing homes at 11:45:36
13 the time you treat them? 11:45:38
14 A. But end up in a nursing home, a 11:45:40
15 good number of them. 11:45:40
16 Q. Well, eventually -- 11:45:44
17 A. Yeah.
18 Q. -- for reasons unrelated to 11:45:44
19 their disease? 11:45:46
20 A. And -- no. Unrelated to the 11:45:48
21 disease as well or the treatment, a good 11:45:48
22 number of them end up in nursing homes. 11:45:50
23 Q. Okay. 11:45:52
24 A. But it not -- I mean, I can't 11:45:52
25 tell you the proportion. 11:45:54



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1 Q. Okay. You haven't performed any 11:45:56
2 calculations on that? 11:45:56
3 A. I have not performed any 11:45:58
4 calculations, no. 11:46:00
5 Q. Or compiled any -- 11:46:00
6 A. Because it's different from 11:46:02
7 coming from nursing home or ending in nursing 11:46:04
8 home, okay. 11:46:06
9 Q. Okay. All right. 11:46:08
10 A. But I don't have any 11:46:10
11 calculations as you said -- the last 11:46:12
12 question, no. 11:46:12
13 Q. Okay. And you have no data 11:46:14
14 compiled on that issue? 11:46:14
15 A. I don't have any. 11:46:16
16 Q. Doctor, you have no information 11:46:54
17 whatsoever of any kind regarding any 11:46:58
18 treatment that was actually rendered to any 11:47:00
19 person whose expenditures are the subject of 11:47:04
20 this lawsuit? 11:47:04
21 A. I don't. 11:47:04
22 Q. You have no information of any 11:47:08
23 kind regarding any expenditure that was 11:47:10
24 actually incurred with respect to any patient 11:47:12
25 whose expenditures are the subject of this 11:47:14



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1 lawsuit? 11:47:16
2 A. I don't. 11:47:16
3 Q. You have no opinions regarding 11:47:26
4 the cause of any disease that allegedly was 11:47:34
5 suffered by any person whose expenditures are 11:47:38
6 the subject of this lawsuit? 11:47:38
7 A. I don't. 11:47:38
8 Q. Okay. That's all I have, 11:47:40
9 Doctor. Thank you. 11:47:42
10 MR. STEED: We reserve our questions 11:47:44
11 for trial. 11:47:44
12 THE VIDEOGRAPHER: There being no 11:47:44
13 further questions, we're concluded at 11:47:48
14 approximately 11:47 a.m. 11:47:48
15
16 (The deposition concluded at
17 11:47 a.m.)
18
19
20 (Signature waived.)
21 HELMUTH GOEPFERT, M.D.
22
23
24
25



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1 STATE OF TEXAS )
2 COUNTY OF HARRIS )
3
4 I, Ruthie Trevino, Texas CSR No. 6087, do
5 hereby certify:
6 That the foregoing deposition of HELMUTH
7 GOEPFERT, M.D., was taken before me at the
8 time and place herein set forth, at which
9 time the witness was put under oath by me;
10 That the testimony of the witness and all
11 objections made at the time of the
12 examination were recorded stenographically by
13 me, were thereafter transcribed under my
14 direction and supervision and that the
15 foregoing is a true record of same.
16 I further certify that I am neither
17 counsel for nor related to any party to said
18 action, nor in any way interested in the
19 outcome thereof.
20 In witness whereof, I have subscribed my
21 name this 29th day of June, 1998.
22
23
24 Ruthie Trevino
25 Ruthie Trevino, CSR No. 6087, CSR



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1 DEPOSITION EXHIBITS

2 HELMUTH GOEPFERT, M.D.

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| NUMBER | DESCRIPTION | IDENTIFIED |
|---|---|---|
| 1 | Curriculum Vitae of Helmuth Goepfert, M.D. | 32 |
| 2 | Fax cover sheet and letter dated 6-11-98 to Tammy King from Sharon Schroeter, with enclosure of disclosure pertaining to Dr. Goepfert | 14 |
| 3 | Letter dated 6-15-98 to Tammy King and Richard Cassella from Kendall C. Montgomery, with enclosure of revised Summary of Opinions of Dr. Goepfert | 27 |



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| 4 | Letter dated 6-9-98 to Dr. Helmuth Goepfert from Kendall C. Montgomery, with enclosure of various documents for review in the case of State of Oklahoma, et al., versus R. J. Reynolds Tobacco Company, et al. | 9 |
| 5 | Dr. Helmuth Goepfert, M.D., Summary of Opinions, with handwritten revisions | 27 |



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